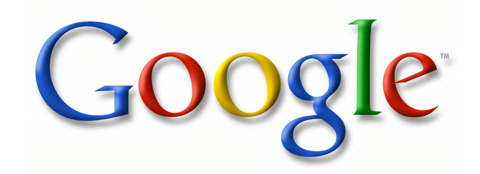



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International Maritime Committee

BULLETIN Nr 19

VENICE CONFERENCE

SEPTEMBER 1907

President : Prof. Dr. ALB. MARGHIERI, M. P.

I. — DRAFT-TREATY ON LIMITATION OF SHIPOWNER'S LIABILITY.

II. — DRAFT-TREATY ON MARITIME MORTGAGES AND PRIVILEGED LIENS.

III. — CONFLICTS OF LAW AS TO FREIGHT

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INTERNATIONAL MARITIME COMMITTEE

BULLETIN N° 19

VENICE CONFERENCE

SEPTEMBER 1907

SUMMARY:

PREFACE

Two draft-treaties of great importance, the one relating to limitation of shipowners liability and the other to maritime mortgages and liens, were submitted for discussion to the Venice Conference. Both drafts had been considered at former meetings where they had been the subject of careful study and given rise to very interesting debates, in which a very great part has been taken by the most prominant jurists and business — men who from all parts of the world, had readily answered to our call.

I. — *Draft-treaty on Limitation of Shipowners Liability.*— This draft-treaty only refers to damages to goods. On account of difficulties which until now appeared insuperable, the question as to damages for loss of life or personal injury has been left to the decision of the national legislations, in conformity with the resolutions passed at former Conferences. The draft-treaty is based on principles which, after lengthy and careful discussions, were adopted for the first time at the London Conference (1899); they represent a reasonable compromise between the legal systems of the Continent and the United States on the one side, and the British system on the other hand. The basis of that system is the limitation of the liability of the shipowner to the ship, the freight and their accessories relating to the voyage, or to their value at the end of the voyage, the shipower having the option of substituting in their stead a lump sum of £ 8 per gross ton.

The great advantage of such a solution is that it would introduce iniformity in a matter in which until now there

were only divergencies and difficulties. It puts the shipowners, the cargo-owners and the underwriters of all countries on the same footing, and thus clearly represents a very considerable progress. Besides, it cannot be denied that this system is essentially fair. It merges a part of the principles of two entirely divergent systems of legislation and forms thereout a compromise wich leaves intact the methods of limiting the shipowners' liability adopted by each system : a lump sum representing alike the property at sea and the liability. According to trustworthy statistics, the commercial value of steamers is, on the average, less than to £ 8 per ton. If this figure is exceeded sometimes in the case of passenger-steamers, it must be remembered that the great services rendered by such vessels in insuring speedy communication between the various parts of the world, together with the large pecuniary outlay involved and the great risks to which they are exposed, afford a strong argument against any increase at their cost, of that £ 8 rate which is already very high, as established by the English law. On the other hand the owners of ships of a lower value have just ground of complaint against the excessive burden of the English rule, and the option which is left now to them to free themselves by abandoning ship and freight, or by paying an amount equivalent thereto, will doubtless give them satisfaction, whilst it conforms to the practice which has been followed for centuries by the Continental nations and by the United States.

The limitation of liability will apply generally to the acts of the Master, of the crew, of the pilot and of all other persons in the service of the ship ; it will also extend to the contractual or legal liabilities entered into by the Master, as well as to sums payable for salvage. However, this rule is not without its exception. It has been considered that the present state of the shipowning industry

does not now require, as in former times, that limitation of liability should extend (as in continental law) to supplies and repairs ordered by the Master in the course of the voyage. These come within the normal expenses of the voyage, for which the shipowner can and must provide. Modern facilities of communication, the fact that everywhere maritime agencies are established, the extension of oversea-credit, the intervention of the underwriters in case of average, no longer justify the cotinental rule under which the shipowner is allowed to escape his ordinary contractual liabilities on grounds which might seem rather arbitraty. It would be a real iniquity ! It would not be just that in case ot loss of the ship, the shipowner should be allowed to invoke the limitation of liability if, for instance, a bill drawn by the Master in payment for a supply of coals, happens not to have been accepted by the owner at the time when the news of the ship's loss reached him. The same reasons apply as regards repairs of the ship. Finally, from a sense of justice towards those who devote their work and risk their lives in the service of maritime enterprises, it has been decided that the shipowner shall remain personally liable without limitation for the wages of the Master and crew. These exceptions to the rule of limitation have to a large extent facilited an international agreement. The British delegation, whilst agreeing to the continental limitation for the liabilities entered into by the Master generally, has on the other hand obtained satifaction for the claims which they deemed it unfair to subject to any risk ; and it was even possible to meet the views of the United States' delegates who abserved that that country, although having not a large commercial marine, had, as far as supplies and repairs of foreign ships are concerned, a very large interest in insuring the payment of the claims resulting therefrom.

In case of a ship arrested in the course of the voyage, as is usual after a collision, bail is generally given to guarantee the pending claims and the ship continues her voyage. It has been admitted that such bail should not in any way be affected by subsequent events and that as regards these latter, the liability should subsist in its entirety, without being in any measure diminished by the bail previously given. This decision, in view of the large interests involved, also seems to be good policy.

This is the only system which may lead to a uniform law. To sacrifice this great interest for reasons of pure theory or on account of a system which from a scientifical point of view might seem more perfect and in better harmony — this would only be a policy devoid of wisdom and practical sense. Philosophical perfection of laws does not matter as much as their practical value. Especially on the latter ground, the Venice draft-treaty can give satisfaction to the Governments, as it has very recently been proved in Belgium, where Parliament passed a law which puts into practice the Resolutions adopted at Venice.

II. *Draft-Treaty on Maritime Martgages and Liens.* — The code on Maritime Mortgages and Liens on ships has been inspired by this paramount object namely to insure to maritime credit a really solid basis of actuel value, and to regulate that credit in a practical way corresponding more to the actual requirements of modern navigation than to theorical conceptions derived from civil law and traditions.

Every day the capital required by maritime commerce increases. If we wish to enable maritime commerce to obtain such money on reasonable terms, it must be in a position to offer real securities, wich are only to be found in the merchant fleet itself : It is therefore necessary that

maritime mortgeges, valid in one country, should be respected everywhere else. To effect this, but one condition is required : viz, that the mortgage be properly published. The importance of this point becomes the more evident when it is considered that maritime morgages, validly made according to the laws of one country, have often been declared invalid in another country so that the lender loses the security on which he relied, especially if one considers what discredit such risks musts necessarily throw on maritime mortgages. But as to the forms for insuring such publicity, the only course has seemed to entrust this matter to the national legislation of each State.

Without intending to trespass on this reserved ground, where administrative questions, often very delicate, are to be met with, the Conference has nevertheless received with approval a motion expressed by the Italian delegation : that all countries should adopt an easy and simple system of registration and publication of Mortgages. In order to complete this part of the Committees work, the system existing or to be adopted in each country is now being examined.

But even were the most regular publicity for maritime mortgages organized, and even were they strictly respected in all countries when duly and validly made, this would not be sufficient to insure a solid basis to maritime credit; for, even more than the divergencies between the existing legislations, the variety of maritime liens which now exist under the ruling laws and rank prior to mortgages, renders the latter almost worthless.

Such liens are unknown; their extent, their number and their duration are so uncertain and variable, that maritime credit is thereby paralysed. It was therefore necessary to reduce as much as possible the number of such liens and to reduce also the duration of their validity. Finally,

it seemed just to strike out the liens allowed hitherto for claims which had a right of regress both against the property at risk on sea and against the shipowners' property on shore, and to allow an advantage to those claims against which limitation of liability is admitted. Amongst these latter, claims arising out of a contract concluded with the ship, i. e. the contract of carriage, do not require a lien. Since negligence clauses exonerating the shipowner for collisions and other accidents have come into general use in bills-of-lading, it would be at least strange to grant to the parties interested on cargo a preference for claims against the ship, whereas in practice they consent to renounce this right altogether.

In short, it was agreed that a careful examinatian of the present state of things led to the two following conclusions: first that the number of liens should be strictly limited to claims for taxes and public dues and expenses for preservation of the ship, for the wages of the crew, for the indemnity for salvage and assistance and for damages caused, by collision, to another ship and her cargo;

secondly that if liens are restricted within these limits, the danger resulting from unknown priveleges entirely disappears; and the lender is further enabled to cover himself by insurrance against the most important of those risks; i. e. salvage, and collision, which, as they arise from accident of navigation, are within the ordinary marine policy. Finally, a delay of one year has been fixed, in principle, for the prescription on liens.

Under such conditions, the lender may 1) measure those risks and obtain a security which is not liable to be entirely absorbed by unknown liens, the number and nature of which cannot leave him any garantee of payment, 2) cover himself by insurance against the greatest part of the risks which he runs on account of privileged claims.

The discussion has shewn that, beyond the claims enumerated in the draft-treaty, other liens, such as several laws grant, can be replaced, with advantage, by a maritime mortgage, whilst this latter would be of a far greater value than formerly, seeing that the greater part of the liens have been done away with.

In the course of discussions, the German delegation pointed out and very properly, that there was a direct relation between the two draft-treaties and expressed the desire that both drafts should be put in accord. This object was effected to a large extent by the provisions referred to.

* * *

Fifteen nations were represented at the Conference.

The debates were very interesting and followed closely.

The votes on some special questions, have, of course, given rise to some divergencies of opinion, but the conference was unanimous in admitting, as a whole, the two drafts agreed would represent a great progress, and it was with practical unanimity that the following motion was carried :

« This Conference is of opinion that the Draft-codes on Limitation of Shipowners' Liability and on Maritime Mortgages and Liens settled at Venice, constitute a fair compromise between existing legislations and interests and ought to become law.

» The Permanent Bureau is therefore directed humbly to request the Belgian Government to summon the third meeting of the Diplomatic Conference and to lay before it the two codes passed at Venice, in order that they may be dealt with by the Powers and become law concurrently with the codes on Collision and Salvage. »

The Conference also passed the following resolutions :

« The Conference direct the Permanent Bureau to » decide on the amendements referred to them and gives » them the necessary power to make to these drafts the » necessary alterations of detail which they might think » proper in order to facilitate their being approved by » the Diplomatic conference and their adoption by the » Governments. »

With regards to the Draft-treaty on Mortgages and Liens :

« The Conference expresses the wish that the necessary » steps should be taken to establish in every country a » simple means of publishing and registering securities, » hypothecations and mortgages on ships, and that the » national Associations should in the meantime furnish the » Permanent Bureau with a report on the legislative and » administrative regulations at present in force in their » respective countries in regard to such registration and » p ıblication. »

We therefore earnestly request the national Associations to let us have at their earliest convenience a summary statement on the points mentioned in this last resolution.

Before closing this brief report on the proceedings of the Venice Conference, we feel bound to express our gratitude to the Italian Government, and specially to His Excellency the Minister of Grace and Justice who presided over our first sitting and who opened the labours of the conference with a very remarkable speech which was received by deserved applause ; to the Municipality of Venice, to the Chamber of Commerce, to the « Navigazione Generale Italiana », and most of all to the Italian Association of Maritime Law and the Reception-Committee which they had constituted. The reception of our foreign members was a most cordial and hospitable one, which we shall always remember.

We may add that the Governments of Austria, Belgium, Hungary, Italy, Japan, the Netherlands, the Argentine Republic and Spain have sent to our conference official representatives ad audiendum et referendum, in order to be kept informed about our labours. We beg to express to those Governments our sincere thanks for these marks of esteem.

On closing these introductory remarks, we beg to announce that the 2nd session of the Diplomatic Conference will probably meet at Brussels in December next.

The Hon. General Secretaries :

LOUIS FRANCK
LESLIE SCOTT.

Resolutions of the Venice Conference

(SEPTEMBER 1907)

Draft-treaty on Limitation of Shipowners Liability

ARTICLE 1

The rights and liabilities of the parties interested shall be regulated according to the provisions of the present convention.

a) When the vessels concerned belong to the contracting States.

b) In every case in which the national law shall have applied the provisions of the present convention.

ARTICLE 2

The owner of a vessel shall not be liable beyond the vessel, freight and the accessories of the vessel and the freight appertaining to the voyage

1° for the acts and defaults of the captain, crew, pilot or any other person in the service of the vessel;

2° for salvage remuneration and other obligations legal or contractual incurred by the captain.

The owner is liable without limit for the wages of the captain and crew and for repairs and necessaries.

The above provisions do not affect any jurisdiction, method of procedure or form of action recognized or adopted by the national laws.

Article 3

The freight mentioned in article 2 is the hire or freight without deduction, whether the question arises in reference to freight or hire paid in advance, to freight or hire already due or to freight or hire payable in any event.

Passage money and demurrage are in the same position as freight.

The accessories mentioned in Art. 2 are :

1° Contributions due to the owner of the vessel for general average losses in so far as such losses constitute material damage sustained by the vessel but not yet repaired ;

2° Damages due for the repair of any injury sustained by the vessel ;

3° Sums of money coming to the shipowner for salvage.

Money due or payable in respect of contracts of insurance, premiums, subventions or other national subsidies shall not be considered accessories of the vessel.

Article 4

The owner may discharge his liability in respect of which the limitation is granted either by abandoning the vessel, the freight and their accessories or by the means referred to in articles 6 and 7.

This enactment shall not affect the provisions of certain national laws relative to the execution of process on the ship, freight and accessories.

Article 5

If there exists in favour of creditors any right of priority on the vessel or freight with regard to which no limitation of liability is permitted, the shipowner shall be liable to

make up the amount forming the limit of his liability by a payment equal to the sum for the recovery of which such creditors may avail themselves of their right of priority.

Article 6

The shipowner may substitute for the vessel its value at the end of the voyage.

Article 7

In every case the shipowner shall have the right to obtain the release of the vessel, the freight and the accessories mentioned in article 2, by the payment of an amount limited, for each voyage, to eight pounds sterling or its epuivalent.

This enactment has no application to sums payable for assistance or salvage.

Article 8

The voyage shall be deemed to be at an end after the complete discharge of the merchandise and passengers on board at the moment when the obligation arose.

Article 9

The owner may take in regard to the vessel and on behalf of whom it may concern such measures as may be expedient without prejudicing his right to exercise the options hereinbefore granted.

But he shall be responsible for all deterioration or damage to the ship which may take place or be caused after the end of the voyage to the prejudice of creditors in respect of whose debts limitation is admitted.

ARTICLE 10

The preceding provisions shall not prejudice the right of the creditors to seize the vessel at a port of call even before the end of the voyage.

The creditor who arrests the ship shall be entitled to the bail given to effect its release according to the terms under which the bail is given and his rights shall not be affected by subsequent events. In the event of bail being so given, the rights of other creditors shall not be affected thereby.

ARTICLE 11

The preceeding provisions shall apply to liabilities arising out of an obligation to raise the wreck of a vessel whether the wreck was occasioned by the fault of the Captain or not.

They shall not apply to liabilities arising from the personal default of the owner, from contracts entered into by himself, or from those he authorised or ratified.

ARTICLE 12

An « armateur » or charterer who under the national law is liable as owner, may limit his liability in the manner permitted by this code to an owner.

ARTICLE 13

The present treaty has no application to claims for loss of life or personal injury which remain regulated exclusively by the national laws.

Draft-treaty on Maritime Mortgages and Liens

Article 1

Hypothecations, mortgages and securities duly made and registered in the country of their origin, shall be acknowledged in all other countries and shall therein have the same effect as in the country of their origin.

Article 2

Maritime liens shall take precedence of the rights mentioned in the last preceding article.

Article 3

Only the follewing liabilities shall give rise to maritime liens on a ship, her accessories and freight due in respect of the voyage in the course of which the liabities arose, and shall take rank in the following order (see arts 2 and 3 of the draft-treatz on the liability of shipowners).

1° Court fees, taxes and public charges and the expenses of warehousing, watching and preservation.

2° The wages of the master and crew since the date of the last signing on up to a maximum of six months wages.

3° Money due for salvage.

4° Money due to the owners of another ship, or of her cargo or to her crew or passengers in respect of a collision or other accident arising from some act or default for which te ship is to blame.

ARTICLE 4

Maritime liens shall rank in accordance with the priorities laid down in art. 3. Liabilities appearing in the same class share rateably, with the exception of liabilities for salvage which shall rank in the inverse order of the dates on which they came into existence.

ARTICLE 5

A maritime lien shall come to an end at the expiration of one year after the claim has originated.

The grounds upon which such prescription may be suspended or interrupted shall be determined by the law of the Court where the case is tried.

The fact that the plaintiff has not had a reasonable opportunity of seizing the salved vessel within the territorial waters of the State where he is domiciled or has his principal place of business, may be deemed, by said law, to be a sufficient ground for the suspension of the prescription imposed by this article.

ARTICLE 6

The lien on freight shall extend only to the hire or freight in the hands of charterer, shipper, consignee, captain or agent, or any other person. It shall not extend to freight actually received by the shipowner in person.

International Maritime Committee

STATUTES

ART. 1. The International Maritime Committee propose :

a) To further, by conferences, publications and divers works, the unification of maritime law ;

b) to encourage the creation of national associations for the unification of maritime law ;

c) to maintain, between these associations, regular communication and united action.

ART. 2. The International Maritime Committee is composed of titulary members and of delegates of the National Associations.

The founding members are, by right, titulary members.

Their number is limited to nine for each country.

The number of delegates of national associations is limited to six for each country.

To complete the number of titulary members, as when a vacancy occurs, an election may be held at the first meeting following the constitution of the committee or the vacancy.

The election shall be decided by secret ballot of the titulary members, the candidate receiving the absolute majority being successful.

Art. 3. Each conference shall choose its own officers and take the necessary steps for the execution of its resolutions and the preparation of following reunions.

The following article however shall provide for such cases where no such decisions have been taken.

ART. 4. In the interval between the conferences, the administration of the committee shall be entrusted to a permanent board.

The permanent board shall be appointed for three years and shall consist of : —

1º A president, vice-president and secretary or secretaries, who shall provide for the maintenance of regular communication between the national Associations, the management of the committee and the execution of its decisions.

2º Of members, in the proportion of one for each country represented in the committee, chosen from among either the titulary members or the delegates of the national associations.

The board thus formed shall, should it be nessary, draw up the programme of the International Conferences.

The members of the permanent board are appointed by the International Maritime Committee. The elections are by secret ballot, the candidate receiving the absolute majority being successful.

Art. 5. — The titulary members of the International Maritime Committee pay an annual subscription of twenty five francs.

Art. 6. — The national associations shall be invited to contribute to the expenses of the committee.

Art. 7. — The length of time during which a titulary member may sit is indefinite and can be terminated either by resignation or by deliberation of the committee.

Art. 8. — The present statutes may always be modified, at the proposal of the board and after having been placed upon the order of the day of the reunion.

Art. 9. — The International Maritime Committee shall meet, unless unforeseen circumstances prevent, at least once a year. It shall determine directly or by delegation the time and place of such conference. An extraordinary meeting may be called by the permanent board or at the request of fifteen members, in which case the meeting shall be held in the country where the headquarters of the permanent board are established.

No vote shall be considered valid if not more than half of the countries affiliated to the committee are present and if the vote does not give an absolute majority of the countries present, the members voting by nations.

Art. 10. — Every three years the committee shall designate the headquarters of the permanent board,

Permanent Board
of the International Maritime Committee

FOR 1908-1911

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OTTO THORESEN, Shipowner, Christiania.

R. ULRICH, general Secretary of the *Internationaler Transportversicherungs Verband* and of the *Lloyd Germanique*, Berlin.

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François Vio, Lord Mayor of Fiume.

Hugo Eidlitz, Manager of the « Adria navigation Cy », Fiume.

P. Josef Kovaes, General Secretary of the « Adria », Fiume.

Sigismondo Copaitich, President of the Ungaro-Croata navigation Cy, Fiume.

H. Math. Pollich, Director of the Ungaro-Croata navigation Cy, Fiume.

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SWEDEN

Mr. ELIEL LÖFGREN, Secretary and delegate of the Swedish Association of Maritime Law, Stockholm.

INTERNATIONAL MARITIME COMMITTEE

Venice Conference 1907

AGENDA-PAPER :

WEDNESDAY, SEPTEMBER 25th

10 o'cl. a. m. : Opening sitting, honoured by the presence of their Excellencies the Ministers of Justice, of Foreign Affairs, of Marine and of Commerce.
Welcome speeches.
Opening speech by H. Exc. the Minister of Justice.
Election of the Officers of the Conference.
Report on the labours of the Diplomatic Conference at Brussels and on the work of the International Maritime Committee, since the Liverpool Conference.

4 o'cl. p. m. : Discussion : Draft-treaty on Limitation of Shipowners Liability.

THURSDAY, SEPTEMBER 26th

9 o'cl. a. m. : Draft-treaty on Maritime Mortgages and Liens. — Discussion.

4 o'cl. p. m. : Continuation of the discussion on Maritime Mortgages and Liens.

FRIDAY, SEPTEMBER 27th

9 o'cl. a. m. : Conflicts of Law as to Freight. — Discussion.

4 o'cl. p. m. : Conflicts of Law as to Freight. — Discussion continued.

SATURDAY, SEPTEMBER 28th

9 o'cl. a. m. : 1. Conflicts of Law as to Freight. — Discussion continued.
2. Place of the next Conference.
3. Closing of the Conference.
4. Administrative sitting : general meeting of the permanent members of the International Maritime Committee.

PARIS SUB-COMMITTEE

JUNE 1907

REPORTS

The Sub-Committee nominated by the Permanent Bureau in consequence of the Liverpool Conference's Resolutions, to report on the draft-treaties on Limitation of Shipowners' Liabiltty and on Maritime Mortgages & Liens on Ships, met at Paris, on June 4th 1906, at the head-office of the Comité Central des Armateurs de France.

Were present :

MM. R. B. D. Acland, (London); F. C. Autran, (Marseille); (Dr. Fr. Berlingieri, (Genoa); L. de Valroger, (Paris); Louis Franck, (Antwerp); Henri Fromageot, (Paris); Léon Hennebicq, (Brussels); Charles Le Jeune, (Antwerp); B. C. J. Loder (Rotterdam); Charles Lyon-Caen, (Paris); Dr. A. Marghieri, (Naples); Benj. Morel-Spiers, (Dunkirk); Dr. Alfred Sieveking, (Hamburgh); Leslie Scott, (London); James Simpson, (Liverpool); Douglas Owen, (London); René Verneaux (Paris).

Were prevented from being present :

MM. C. D. Asser, Jr. (Amsterdam; A. de Berencreutz, (Antwerp); William Gow, (Liverpool); Dr. Oscar Platou, (Christiania); William Pikford, (Londen); Sir Alfred Jones, (Liverpool); J. Stanley Mitcalfe, (Newcastle-upon-Tyne); Dr. Antonio Vio (Fiume).

The following resolutions have been passed at the Liverpool Conference (June 1905) :

1. — Draft-treaty on Limitation of Shipowners' Liability

RESOLUTION

« That this Conference, approving the terms of the
» Draft-treaty on the Limitation of Shipowners' Liabi-
» lity as altered by the resolutions passed at the present
» meeting, requests the Permanent Bureau to appoint a
» Sub-Committee

» *a*) to revise the details of the Draft-treaty in order
» satisfactorily to provide for the proper application of
» the principles approved by this Conference.

» *b*) to consider the questions of principle as well as
» detail involved in (*c*) and in the proposed additional
» sub-clause (*d*) as drawn in M. Acland's amendment « and
» also the more precise definition of the terms « freight »
» and « net-freight ».

» to report as soon as practicable to the Permanent
» Bureau. »

(The Permanent Bureau has appointed as members of this Sub-Committee the same gentlemen elected by the Conference to examine the Draft-treaty on Mortgages & Maritime Liens).

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2. — Draft-treaty on Maritime Mortgages and Liens on Ships

« That this Conference, seeing that there seems to be
» every prospect, in view of the valuable discussions
» and suggestions made to the present Conference, of the
» adjustment of existing differences of opinion, and
» further that the form and language of the Draft-Treaty
» as it stands require revision, requests the Permanent
» Bureau to refer the matter again to the existing sub-
» committee, adding to its number :

» MM. Morel Spiers, Le Jeune, Leslie Scott, Wm.
» Gow, Simpson. »

The sub-committee was therefore composed as follows :

MM. R. B. D. Acland, (London); C. D. Asser, Jr. (Amsterdam); F. C. Autran, (Paris); Fr. Berlingieri, (Genoa); T. G. Carver, (London); Louis Franck, (Antwerp); Henri Fromageot, (Paris); Wm Gow, (Liverpool); Leon Hennebicq, (Brussels); Ch. Le Jeune, (Antwerp); Ch. Lyon-Caen, (Paris); Prof. Dr. A. Marghieri, (Naples); B. Morel-Spiers, (Dunkirk); Dr. Alfred Sieveking, (Hamburg); Leslie Scott, (Liverpool); James Simpson, (Liverpool); René Verneaux, (Paris); Dr. Ant. Vio, (Fiume).

TEXT OF THE DRAFT-TREATIES

drawn up by the Special Sub-Committee sitting at Paris, June 4th & 5th, 1906.

(adopted under reserve of a second meeting of the Sub-Committee).

Draft-Treaty relating to Limitation of Ship-Owner's Liability (*).

ARTICLE I.

The rights and liabilities of the parties interested shall be regulated according to the provisions of the present convention,

a) When the vessels concerned belong to the contracting States,

b) In every case in which the national law shall have applied the provisions of the present convention.

(*) The Liverpool draft-treaty was as follows :

ARTICLE I. — Where any damage or loss

1) is caused to any goods, merchandise or any other things whatsoever, on board the ship or

2) is caused by reason of the improper navigation of such ship to any other vessel or to any goods, merchandise or other things whatsoever on board any other vessel

3) is caused to dykes, quays and other fixed objects, as well as the removal of wrecks,

the liability of the shipowner is for each voyage limited :

ART. 2.

The owner of a vessel shall not be personally liable, but shall be liable only to the extent of the value of the vessel, of the freight and of the accessories of the vessel appertaining to the voyage for damage or loss caused by the Acte of the Captain, crew or any other person assisting the Captain in the service of the vessel to

1° the goods, merchandise or other things whatsoever on board such vessel;

2° another vessel and to the goods, merchandise and other things whatsoever on board that vessel;

3° dikes, quays and other fixed objects.

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a) To the ship or its value at the end of the voyage, at the option of the owner.

b) To the net freight for the voyage until its termination.

c) To the indemnities due to the owner for general average, collision or other damage suffered by the ship during the voyage, subject to deduction of the expenses incurred in putting the ship in a fit state to complete the voyage.

The right of the creditors does not include the claim of the owner against the insurer.

By net freight ist meant the gross freight and passage money even if paid in advance, deduction being made of the charges which are proper to the same.

The voyage will be considered ended after final discharge of the goods and passengers happening to be on board the ship and shown on the manifest at the moment when the obligation has arisen and in case of successive obligations after final discharge of the whole of the goods and passengers happening to be on board at the moment both of the one and of the other event.

If the ship carries neither goods nor passengers, the voyage will be considered ended at the first port it puts into or at the particular port where it happens to be.

ART. 2. — If the owner elects for the abandonment of the ship and does not carry this into effect until some time after the end of the voyage, he is only freed up to the amount of the value of the ship at

ART. 3.

The freight mentioned in article 2 is the hire or freight coming to the owner of the vessel without deduction whether the question arises in reference to freight or hire paid in advance to freight or hire already due or to freight or hire payable in any event.

Passage money is in the same position as freight.

The accessories mentioned in Art. 2 are :

1° Contributions due to the owner of the vessel for general average losses in so far as such losses constitute material damage sustained by the vessel but not yet repaired ;

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the moment of the abandonment and he remains bound for the difference between this value and that which the ship had at the end of the voyage.

ART. 3. — In the case provided for in article 2 and to provide for the case where the owner elects so far as concerns the ship, for the payment of its value at the end of the voyage, the valuation may at every time after the end of the voyage be judicially fixed by proceedings taken after due notice to the other side at the demand of the party who is the most diligent.

ART. 4. — The owner has the right to substitute for the modes of obtaining freedom from liability provided in article 1. payment of an indemnity limited for each voyage to £ 8. per ton of the gross tonnage of his ship.

ART. 5. — If there exists a priority of lien upon the ship or upon the freight in favour of creditors in respect of whom limitation of liability is not admitted, the owner of the ship will be personally bound to make up in specie to the extent of the sums first collected by such creditors, the amount forming the limit of his liability.

ART. 6. — Limitation of liability determined according to the preceding articles is not applicable to the case of personal fault of the owner. It is not admitted for the wages of master and crew.

ART. 7. — When according to the laws applicable, the limitation of liability for damage to property is different from that for personal injury, the present treaty shall only have effect so far as concerns damage to property.

2° Damages due for the repair of any injury sustained by the vessel.

3° Sums of money coming to the shipowner for salvage.

Money due or payable in respect of contracts of insurance, premiums, subvention or orther national subsidies shall not be considered accessories of the vessel.

ART. 4.

If there exists in favour of creditors any right of priority on the vessel or freight with regard to which no limitation of liability is permitted, the shipowner shall be liable to make up the amount forming the limit of his liability by a payment equal to the sum for the recovery of which such creditors may avail themselves of their right of priority.

ART. 5.

The shipowner may substitute for the vessel its value at the end of the voyage or the total sum realized in case of a sale pursuant to the order of a Court.

ART. 6.

In every case the shipowner shall have the right to obtain the release of the vessel, the freight and the accessories mentioned in article 2, by the payment of an amount limited, for each voyage, to eight pounds sterling or its equivalent.

ART. 7.

The voyage shall be deemed to be at an end after the complete discharge of the merchandise and passengers on board at the moment when the obligation arose.

The risks of every subsequent voyage shall be borne by the shipowner without the possibility of their diminishing the security defined by the preceding articles.

ART. 8.

The preceding provisions shall not prejudice the right of the creditors to seize the vessel at a port of call even before the end of the voyage. The bail given to obtain the release of the ship shall not be affected by subsequent events.

ART. 9.

The preceding provisions shall apply to liabilities arising out of an obligation to raise the wreck of a vessel whether the wreck was occasioned by the fault of the Captain or not.

They shall not apply to liabilities arising from the personal default of the owner.

Draft-Treaty
on Hypothecations and Maritime Liens (*)

ARTICLE 1.

Hypothecations, mortgages and securities duly made and registered in the country of their origin, shall be acknowledged in all other countries and shall therein have the same effect as in the country of their origin.

ART. 2.

Maritime liens shall take precedence of the rights mentioned in the last preceding article.

ART. 3.

The following liabilities shall give rise to maritime liens on a ship, her accessories and freight due in respect of the voyage in the course of which the liabilities arose, and shall take rank in the following order (see arts 2 and 3 of the draft-treaty on the liability of shipowners).

1° Court fees, taxes and public charges and the expenses of warehousing, watching and preservation.

(*) The Liverpool draft-treaty was as follows :

ARTICLE 1. — Mortgages and similar securities on ships, which are regularly established and published in each of the contracting States, will be respected in all other States and shall have there the same effect as in the country where they were constituted, subject to the provisions of the present treaty as regards Liens and maritime privileged rights.

ART. 2. — Mortgages on ships and other similar rights are overranked by maritime privileges and Liens.

2° The wages of the master and crew since the date of the last signing on up to a maximum of six months wages.

3° Money due for salvage.

4° Money due to the owners of another ship, or of her cargo or to her crew or passengers in respect of a collision or other accident arising from some act or default for which the ship is to blame.

ART. 3. — A privileged right on ships is given to :

1° Claims for judicial costs, taxes and public dues, custody and conservatory costs.

2° Indemnities due for salvage, pilotage and towage and for general average during the last voyage.

3° Wages of the master and crew, since the last mustering, but with a maximum of 12 months.

4° Claims for damages caused by collision.

5° Master's disbursments, money advanced to the master for the necessaries of the vessel during the last voyage ; loans on bottomry ; indemnities for damages to and short deliveries of cargo ; claims for repairs, furnitures, supplies, outfitting to the ship, but only in so far as these claims arise and are enforced at the port where the vessel lies, or in the ports of the same country where she calls during the same voyage.

ART. 4. — The privilege granted by the preceding article only exists when the debt in question is justified in the form prescribed either by the law of the country where it arose, or by the national law of the ship, and satisfies to the conditions to which the privilege is subjected by either the one or the other of these laws.

ART. 5. — In case the privilege is not restricted to claims arisen during the last voyage, the order of the liens will be inverse to that of the dates of the voyages.

For the same voyage, the privileges will rank amongst them in the order of the enumeration in article 3. Those claims which are classed under the same number in that article will have equal rights.

ART. 6. — The privileged character of all claims is subject to prescription after one year.

The national laws regulate the effect of the transfer of the property in ships on privileged claims and mortgages.

ART. 4.

Maritime liens shall rank in accordane with the priorities laid down in art. 3. Liabilities appearing in the same class share rateably, with the exception of liabilities for salvage which shall rank in the inverse order of the dates on which they came into existence.

ART. 5.

A maritime lien shall come to an end at the expiration of one year after the creditor was in a position to enforce it.

ART. 6.

The lien on freight shall extend only to so much of the freight as has not been actually received by the shipowner in person.

Remarks on the Principal Resolutions

Before entering into a mode detailed report of the discussions, it seems useful to examine the principal resolutions at which the Sub-Committee has arrived :

§ I. — Limitation of Shipowners' Liability

Real character of the claims.

The action against the shipowners, as it is defined by the draft-treaty, derives from the predominating idea that the shipowner's liability is of a special nature, that it attaches and limits itself to the thing, the *res ;* that it is the vessel which is liable rather than the person, who (excepted in some special cases) is no longer liable on his whole property (Art. 774 of German Commercial Code).

The adopted text includes the consequences of contractual faults as well as torts and negligences, as far as both are causing damage to goods, whatever may be the legal connection between the parties.

But on what period ot time is this principle of limitation to apply ; will it be a limit for each voyage ?

Notion of the « voyage ». (Art. III).

During all the former work of the International Maritime Committee, it seems the paramount aim has been to regulate the Shipowners' liability per voyage. But now it was to

be settled what is to be understood by the expression « voyage ».

We may here briefly summarize what was formerly decided on this question : The Antwerp Commission, meeting in September 1903, drew up a draft which contained the following provision : « The voyage will be considered ended after final discharge of the goods and passengers happening to be on board the ship and shown on the manifest at the moment when the obligation has arisen, and in case of successive obligations after final discharge of the whole of the goods and passengers happening to be on board at the moment both of the one and of the other event.

« If the ship carries neither goods nor passengers the voyage will be considered ended at the first port it puts into or at the particular port where it happens to be. »

This draft was submitted for examination to the National Associations. Among the reports which were made in reply to same, we may mention the very remarkable work of Mr DE VALROGER,. then Chairman of the French Association.

This report was printed as an annex to the Amsterdam Conference's Report. We cannot do better but recall the terms of this report : « Article 3 fixes the rate of 8 £ *for* » *each voyage*. According to English law, as we stated » already, the liability is fixed in respect of *each distinct* » *accident*. The draft-treaty of the Antwerp Commission » thus modifies appreciably the liability which is admitted » at present in England...... »

« But what is the point of time at which the state of the » ship or the amount or her value, is to be determined ? » As to this, the most simple idea which presents itself to » the mind is the following : The abandonment is a cession » of part of a property. It must therefore be determined » as to the ship and the freight, by their value *at the time*

» *of the abandonment.* There is no need to inquire into the
» origin of the debt, or to say to what voyage it relates....

« But this idea however simple, has not prevailed. A
» much more complicated idea has prevailed, namely that
» there should be a special fund available, for each voyage,
» to which the creditors of such voyage should ressort.
» This idea, which is borrowed from the German code, is
» the basis of the system proposed by the Antwerp
» Commission. In this same direction several dates have
» been proposed for fixing the valuation of the ship.

« *1st system.* The state of the ship or the amount of her
» value at the beginning of the voyage, or *before the accident.*
» This idea is the basis of the English system.

« *2nd system.* The state of the vessel after the casualty :
» e. s., in case of collision the value of the ship imme-
» diately after the collision. That is the system which the
» French Association adopted in 1898 on the proposal of
» Mr. AUTRAN (Revue int. Mar., XII, 625, XIII 734;
» XIX 132 and foll.)

« *3rd system.* The value of the ship at the *end of the voyage*
» (Lyon-Caen et Renault, Droit Maritime, I, nr 24),

« This last solution is that which is proposed by the
» Antwerp Commission. The draft-treaty takes as a basis
» the value of the ship at *the end of the voyage to which the*
» *debt attaches.* Each voyage thus forms a special under-
» taking which has its special debts and credits : it is at
» the end of the voyage that the rights of the creditors are
» generally regulated and it is then that they must be
» determined. »

At the Amsterdam Conference, the discussion did not bear on that point and the question was raised only at Liverpool. There indeed, Mr. ELMSLIE developed the English point of view, and it then appeared so important that the Paris-Sub-Committee had to examine it, in con-

sequence of a special amendment of Mr. ACLAND, who came himself to defend it. (See debate on Art. 3. of the first draft).

In agreemeent with the English members, the Sub-Committee finally arrived at a compromise, the practical effect of which is the same as that of the present English law. This compromise is to grant the right of arresting the ship before the end of the voyage, and to have bail provided against release of the arrested ship. If the bail which is given, comes out of the shipowner's property on shore, and if the Continental nations would concede this to the English law, then, of course, the property at sea remains untouched for the remainder of the maritime venture, and the object of the creditors' lien is accrued.

As the shipowner, on the other side, has the option to give bail or not, so he will consult his own interest to make a choice between the old English system (according to which the ship or her value are at a fixed rate) and the system of the Sub-Committee, according to which the voyage ends by the arrest of the ship.

In the first case, the ship continues her voyage, but the maritime venture remains such as it was before the occurring of the accident for which bail was given. In the second case, the port of call where the ship is arrested, becomes the port where the voyage ends. Whatever course be adopted, at the port where the liquidation of the maritime venture takes place, the object on which the creditors have a lien will be untouched, notwithstanding the accidents which may have occurred.

This solution seems very simple, practical and may be adopted without any difficulties. The same may be said as to the extension of Art. 774 of the German Code, for the case where a shipowner sends his ship on another voyage without previously outfitting it sufficiently. In such cases, he must be liable on his property on shore.

This latter solution, we may add, seems to proclaim its equity in the jurisprudence already now, under the law of abandonment : the Court of Cassation of Belgium has recently decided in that very direction.

Accessories of the ship.

With article 4, we have to examine the question of accessories to the ship, and first of all, to decide what meaning must have the word «freight». The Antwerp-Sub-Committee tried to limit the liability to the net freight and said « By net freight is meant the gross » freight and passage money, even if paid in advance, » deduction being made of the charges which are proper » to the same ».

During the discussion, it has been remarked very rightly that this «net freight» could not be practically ascertained without venturing in such calculations as might involve enormous difficulties, and that this very system had been renounced in the German and Scandinavian Codes. (Report of Mr. DE VALROGER, fol. 65.)

As to the extent of the term « freight », we have seen that it must be the freight as per charter-party, and not the freight as per bills-of-lading.

No one raised the question whether freight already paid was included in the lien, whether this prepaid freight represents or not the carriage contracted for. It was said, rather in a general way, that no distinction was to be made.

With a desire to be as clear as possible, the Sub-Committee have included in the liability contributions to general average, but only in so far as these contributions represent the value of damages not yet repaired.

But the Commission excluded indemnities due in virtue of a contract of insurance and premiums or subventions paid to navigation companies. In the Sub-Committee's draft, they are not a part of the maritime proporty exposed.

But if assurance-indemnities are excluded, the Commission admitted general average contributions and indemnities for salvage.

As to this latter, we may briefly relate the former decisions.

Those wo advocated the system adopted by the Sub-Committee, argued :

1° that there are vessels exclusively fitted for assistance and salvage and that consequently it is but just to include indemnities relating to these objects, as they represent the only fruit of such ships;

2° that assistance involves often the assisting ships in perils and damages; that it is therefore equitable to abandon with the ship such amounts as represent this depreciation and these risks;

3° that salvage has more and more taken the character of a commercial undertaking; and that if the captain and crew must, in justice be entitled to their share of compensation, there is no reason why the shipowner, who does not interfere personally, should be entitled to make a distinction between the different fruits of his ship, f. i. abandon the freight but keep the salvage-indemnity.

These are the principal points which, in our opinion, deserve special consideration, and on which the attention of the future meetings of the International Maritime Committee has been called by the Paris Sub-Committee.

§ II. — **Maritime Mortgages an Liens**

We must, in the first place, point out the connexity existing between both draft-treaties. At the bottem of either, — as well of the draft-treaty on Limitation of Shipowners' Liability as of that on Maritime Mortgages and Liens, — there is the principle, judicial and practical, that

the notion common to the two, is that of the maritime venture. According to the view we take of the property at sea, we may arrive at conclusions widely differing.

There are, on this head, three opinions possible. The first which considers shipowning as a commercial company, having its assets and its liabilities, the balance of which must be made out. It includes in the maritime venture all fruits accruing to the *universitas juris* which is at the bottom of each shipowners concern, without any distinction whether they derive from contracts or not. The whole of the property of the shipowning concern is thus the guarantee of its creditors, and so all possible amounts earned by the ship must be included in the maritime venture. The guarantee of the creditors is thereby increased in an appreciable way; whilst the interference of the property on shore is considerably diminished. The Genoa Congress, 1892, has decided in this way, creating thus the fiction of the personality of the ship, which becomes the object of periodical liquidations. This opinion is a radical one.

The other opinion is as radical as the first, but in the inverse direction. Here it is considered that the creditors have no other guarantee than the ship, with additoin of the freight, as its natural fruit, but only in so far as this freight represents a benefit. This way of viewing the question has been put forward by the German Association (See the Report referred to above).

Thus, the security of the creditors consists of the ship at the end of the voyage, with the profit it earned.

So this second notion depends on the voyage, whilst the first derives from the fiction of the personality of the ship.

The third opinion is a mixed one. It is ruled by the idea that all which accrues to the ship during the navigation,

is an accessory of same, not even as a final profit, or a net produce, but as a global earning. Here, it must be determined what is a fruit of the vessel, or accrues to it and what relates to contracts, passed by the owner on shore to cover his liability. In this way, insurance belongs to the property on shore; it is a contract passed by the owner in order to protect his property on shore against the contingencies represented by his property at sea. On the other hand, if the vessel is arrested during her voyage, the security of the maritime creditors includes all the sums received on account of the navigation, thus also the indemnity for salvage. The Sub-Committee decided in favor of this mixed system. In developing this system, they adopted an essential rule : to reduce maritime liens to the utmost, in order to ensure a maximum of security for the maritime mortgages. The aim is on one side, to disencumber the venture from any fixed liabilities, and namely from those for which the diligent creditor may have recourse to mortgage, and also from those which are no more desirable, seeing the facility and rapidity of communications, — f. i. bottomry loans.

On the other hand, the aim is to grant to mortgages, after making away with unknown and encumbering priorities, a security including not only the ship, but also the accessories increasing her value as much as possible, and to give thus a more sound basis to the maritime credit.

This was expressed by the Paris-Sub-Committee, and they could hardly come to another conclusion. It is this moderated opinion which, — whether theoretically just or not, — offers most chances to an international agreement.

Summary of the Discussions

The Conference held by the International Maritime Committee from the 14th to the 17th June 1905, at Liverpool, had to examine two draft-treaties : the first relating to Limitation of Shipowners's Liability, the second one bearing on Maritime Mortgages and Liens on Ships.

As to the first of these draft-treaties, the Liverpool meeting agreed on the text which we publish as a note on page 7 of this report ; but before taking any final decision, decided to submit this draft to the perusal of a special Commission.

With relation to the draft-treaty on Maritime Mortgages and Liens, the Conference only expressed general views, without passing special resolutions, but decided to refer the draft to a Sub-Committee, whose members should take into consideration the desires expressed by the Conference on some points.

In consequence of these Liverpool-resolutions, a special Sub-Committee met at Paris, on the 4th & 5th June 1906. The names of the members of this Sub-Committee are mentioned at page 6 of this report.

Mr. F. C. AUTRAN (Marseille) in his capacity of Chairman of the French Association of Maritime Law, presided over the discussions.

In consequence of the discussions and resolutions of the

Liverpool-meeting, the French Association of Maritime Law had drawn up a revised draft-treaty, which has been a basis for the discussions of the Sub-Committee (*).

(*) The draft-treaty of the French Association runs as follows :

ARTICLE 1. – The rights and liabilities of the parties interested shall be regulated according to the provisions of the present convention,

a) When the vessels concerned belong to the contracting States,

b) In every case in which the national law shall have applied the provisions of the present convention.

ART. 2. — The owner of a vessel shall not be personally liable, but shall be liable only to the extent of the value of the vessel and the accessories of the vessel appertaining to the voyage, for damage or loss caused by the acts of the Captain, crew or any other person assisting the Captain in the service of the vessel to

1° the goods, merchandise or other things whatsoever on board such vessel ;

2° another vessel and to the goods, merchandise and other things whatsoever on board that vessel ;

3° dikes, quays and other fixed objects.

ART. 3. — For the application of the preceding provision, the voyage shall be considered at an end after final discharge of the goods and passengers happening to be on board the ship or shown on the manifest at the moment when the obligation has arisen. and in case of successive obligations after final discharge of the whole of the goods and passengers happening to be on board at the moment both of the one and the other event.

If the ship earries neither goods nor passengers, the voyage will be considered at an end at the first port it puts into or at the particular port where it happens to be.

ART. 4. — The accessories mentioned in article 2 include :

1° the amount of the freight and the passage-money, after deduction of.....

3° such sums as are due or paid for contribution to general average, for salvage indemnity, or as indemnity for any damages whatsoever.

Indemnities due or paid in virtue of insurance-contracts are not considered as accessories of the ship.

Draft-Treaty on Limitation of Shipowners' Liability

ARTICLE 1 of the French draft runs as follows :

The rights and liabilities of the parties interested shall be regulated according to the provisions of the present convention :

a) when the vessels concerned belong to the Contracting States,

b) in every case in which the National Law shall have applied the provisions of the present convention.

This article is not to be found in the draft adopted at Liverpool. Its introduction is justfied by the diverging

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ART. 5. — The shipowner may substitue for the vessel its value at the end of the voyage or the total sum realized in case of a sale pursuant to the order of a Court, before the termination of the voyage.

ART. 6. — In every-case the shipowner shall have the right to obtain the release of the vessel and the accessories, by the payement of an indemnity limited, for each voyage, to eight pounds sterling per ton on the gross tonnage.

ART. 7. — The preceding provisions shall apply to liabilities arising out of an obligation to raise the wreck of a vessel in case of stranding.

They shall not apply to liabilities arising from the personal default of the owner.

They shall not apply to the obligation to pay the wages of the master and crew, which is a personal obligation of the owner.

ART. 8. — If any amounts are raised out of the ship or her freight by creditors having a priority lien or privilege on same by reason of personal debts of the shipowner, the latter shall be personally bound to make up in specie such amounts to the creditors who have only a lien on ship and accessories under the above determined conditions.

opinions expressed since then at the Brussels Diplomatic Conference.

The provisions aiming at unification of Maritime law might come into force in case the different States would bind themselves, by treaties among each other, to apply these provisions towards all parties belonging to the Contracting States. This would mean the introduction of a conventional Law. Two arguments were put forward in favour of this idea.

In the first place, this solution would permit everywhere an equal application of the draft-treaties' provisions by way of reciprocity.

On the other hand, in several countries, it would be much easier to introduce the draft-treaties in this way, than if each Country was compelled to modify its own law in accordance with the drafts. It is true that under this system, the provisions of the draft-treaty would not apply where two parties coming under the jurisdiction of the same State, are involved, as in such case, their national law would apply and not the conventional law. A further objection, which is a natural consequence of this first remark is : that then the wording of Article 1 would not be correct, as it states that the shipowner's liability shall be regulated according to the provisions of the convention, for *all* persons and *all* goods happening to be on board, either of the colliding vessel or of the ship collided with : as a matter of course, an exception is to be made in such cases where both parties belong to the same nation, whilst they would be ruled in that case by their own national law.

The Sub-Committee preferred not to take a decision on that question, but to leave it to the Diplomatic Conference which is certainly more competent to decide the point. So they adopted provisorily the wording of Article 1 which was specially drawn up by the French Association, so that it

may adapt itself as well to the system of separate Conventions between the different States as to one Convention between these States, and the Sub-Committee further left it to the Permanent Bureau to find a wording in conformity with such decisions as were already taken and are still to be taken by the representatives of the different Powers.

By the very fact that it was left to the Bureau Permanent to word Article 1, we need no more take into consideration some doubts expressed, viz that said article does only provide for the liabilities of one ship as against another, but not for any liability as against the cargo and any persons happening to be on board.

Article 2 of the French draft runs as follows :

The owner of a vessel shall not be personally liable, but shall be liable only to the extent of the value of the vessel, of the freight and of the accessories of the vessel appertaining to the voyage for damage or loss caused by the acts of the Captain, crew or any other person assisting the Captain in the service of the vessel to

1° the goods, merchandise or other things whatsoever on board such vessel ;

2° another vessel and to the goods, merchandise and other things whatsoever on board that vessel ;

3° dikes, quays and other fixed objects.

Save some small modifications which are still to be effected, this Article 2, with the Articles 3 and 4, cover all questions contained in the Article 1 of the Liverpool draft.

The modification on article 2 is a purely formal one, as the German system of limiting the shipowners' liability is adopted as a basis for the whole draft-treaty and that articles 5 and 6 allow the shipowner to free himself from this liability by payment of the value in money.

The words « Acts of the Captain and Crew » do not

only include nautical faults (wrong navigation) but also all other acts which might involve any liability for the owner. The article is therefore in conformity with the Liverpool draft.

As is several countries, and namely in Italy, the freight is not considered as an accessory of the ship, the Sub-Committee added the words « on ship, freight and the accessories of the ship » ; but outside of this, the whole of article 2 has been approved.

As to the objection already mentioned at article 1, namely that article 2 might be wrongly constructed, it does not interest any more, the Bureau Permanent having to revise the wording of that part of article 1 which relates to the application of the draft-treaty's provisions.

Article 3 of the French draft was a follows :

For the application of the preceding article, the voyage shall be considered at an end after final discharge of the goods and passengers happening to be on board the ship or shown on the manifest at the moment when the obligation has arisen, and in case of successive obligations, after final discharge of the whole of the goods and passengers happening to be on board at the moment both of the one and the other event.

If the ship carries neither goods nor passengers, the voyage will be considered at an end at the first port it puts into, or at the particular port where it happens to be.

This article is in conformity with the two last paragraphs of the Liverpool draft, article 1.

It appeard that this description of the voyage was too long and might leave room for too many doubts. So the Sub-Committee deemed best to leave outside the case where successive obligations arise (2nd part of paragraph 1) as well as the case where the ship sails on ballast, and to keep only the first part of paragraph 1. Therefore, the description of the voyage is at present the following :

« The voyage shall be deemed to be at an end after the complete discharge of the merchandise and passengers on board at the moment when the obligation arose. »

For reasons of mere form, this sentence has become the first paragraph of the new article 7.

Thereby, the meaning of the first description of the voyage has not at all been altered. But the question might arise whether it were not well to go still farther and to put this description of the voyage in accordance with that contained in the German Law (Article 757 of the Commercial Code) which runs as follows :

« Is considered as voyage, in the sense of the present Statute, the voyage for which the ship has been re-equipped or which she undertook, either in consequence of a new charter-contract, or after having completely discharged her cargo. »

Suppose a ship on a combined voyage from A to E, and calling at B, C and D. Between A and B, a collision takes place. If in every port goods are discharged and other merchandise taken to replace them, but in such way that the cargo on board when the accident occurred, is completely discharged at D, — in such case, according to the draft of the Sub-Committee (and also according to the Liverpool draft) the voyage ends at D, as far as the claimants for collision are concerned, and the freight on such goods as were loaded in D for E, would not be liable.

Now, according to German law, the voyage would only be at an end at E and the creditors would have a lien on the freight of the whole voyage. The description embodied in the German Law would far better agree with the practical conception and after all, it would not be so wide a disgression from the Sub-Committee's draft. On the other

hand, this description is much broader and includes also both cases omitted by the Sub-Committee.

The question was raised whether any guarantee should be given to the creditors if, after the end of the voyage, the shipowner should undertake another voyage without having previously paid the ship's debts relating to the last voyage ? It was observed that, at any rate, the shipowner must not be liable beyond the value of his ship and that the creditor has not to complain if, having got no guarantee, he does not arrest the ship as soon as her voyage is ended. But the majority has expressed the opinion that the shipowner should be liable for the amount of his ship's value, every time she undertakes a voyage. It was decided therefore to add as a paragraph 2nd to the new article 7 :

« The risks of every subsequent voyage shall be borne » by the shipowner without the possibility of their dimi- » nishing the security defined by the preceding articles. »

This is conform to article 2 of the Liveroool-draft. If, in the Draft-treaty on Maritime Mortgages and Liens, alluded to hereafter, is added a provision to the effect that liens having arisen during the last voyage, shall rank before claims arisen during a preceding voyage, the practical result of this paragraph would be conform to the provisions contained in article 774 of the German Commercial Code.

There would be however a difference, in this way : that there the shipowner is liable without any restriction, even if the new voyage should be undertaken to the profit of the creditors of the former one, and even if the shipowner does not know that any debts were incurred by his vessel at the time when he sends her again to sea.

This is a concession to the English system, according to which the shipowner is liable, for each accident up to the value of his ship, at the rate of £ 8 per ton. Now, accor-

ding to the draft-treaty, the shipowner shall henceforth be laible for the value of his vessel, or for £ 8 per ton, for each voyage, and not for each accident.

According to article 1 of the Liverpool draft (and also according to that of the Sub-Committee) the shipowner is liable but once for the amount of his ship, namely at the end of the voyage. The English delegates however expressed their desire to have this provision modified in the following terms :

« Provided that where the vessel has been arrested » after the occurrence of such loss or damage as above- » mentioned and before the end of the voyage, the value » of such vessel shall be taken to be the value at the date » of the arrest. »

Suppose, f. i. a ship, worth £ 20.000, undertaking a voyage from Hamburgh to Constantinopel, via Spain and Malta. Owing to her own fault, she collides with a ship, both at Lisbon and at Malta, and in order to avoid being arrested, she must give bail, in each of these ports, for £ 20.000. Now, according to the English proposal, these two securities shall remain entirely binding as against the respective creditors, and they cannot be affected by any casualties occurring during the remainder of the voyage, even if the ship should be lost, f. i., after leaving Malta.

Some members objected against this, and argued this would mean the introduction of a personal liability of the shipowner, which would be in downright contradiction with the other provisions of the draft-treaty. But on the other hand, it was observed that the shipowner could perfectly refuse to give bail and to limit thus his liability to ship and freight. Supposing this to be the case, the ship, arrested at Lisbon, should there be judicially sold, and in that case, the voyage should be at an end at Lisbon and the provisions of the draft-treaty would be complied with.

If however, the shipowner thinks this not to be the most profitable course for himself, and prefers to give voluntarily bail at Lisbon to his own advantage, he thereby renounces ipso facto to his right of limiting his liability and must stand the consequences. As a matter of course, the creditor who has received the bail, may require complete payment from same, without any other creditors having any right upon that bail; nor is this latter (as a substitute for the vessel's value) subjected to any subsequent events of the voyage. If the shipowner thus renounces voluntarily to his rights, the provisions of the draft-treaty on Limitation of Liability do not apply. It is a measure resorted to by the shipowner to his own practical ends; it is therefore no longer a question of law, but a mere question of fact.

If, however, the creditor allows the ship to continue her voyage, this latter ends, of course, at destination and in that case the creditor must be satisfied with that which he finds at the termination of the voyage.

The Sub-Committee agreed with these remarks and has therefore adopted an article 8, running as follows :

The preceding provisions shall not prejudice the right of the creditors to arrest the vessel at a port of call, even before the end of the voyage. The bail given to obtain the release of the ship shall not be affected by subsequent events.

This article may be conciliated with the German law.

Article 4 of the French draft was worded as follows :

The accessories mentioned in article 2 include :

1° the amount of the freight and te passage-money, after deduction of.....

3° such sums as are due or paid for contribution to general average, for salvage indemnity, or as indemnity for any damages whatsoever.

Indemnities due or paid in virtue of insurance-contracts are not considered as accessories of the ship.

This article corresponds to par. 1 sub *b* and *c* and to paragraphs 2 and 3 of article 1 of the Liverpool draft, with this difference however that

1° the amount for which the freight is liable, is left open

2° the indemnities for salvage accruing to the ship are also included in the accessories of the ship.

FREIGHT

The Liverpool Conference had left it to the Sub-Committee to give a definition of the term « freight ».

The first remark which was made, is that this term is too limited and does not include, for instance, the passage-money. For steamers devoted to fishing, there is no freight, there is only the produce of the fishing. Therefore, the term « fruits of the ship » would be better than « freight ». In fact, « fruits of the ship » would also include indemnities for salvage relating to the ship, which should also profit to the creditors. But it was objected that the produce of the fishing and the salvage-indemdities do not represent profits earned by the navigation, but merely the produce of a special work or industry effected during the navigation, and that for these reasons, « fruits of the ship » would also sound too vaguely. That is the reason why the term « freight » was maintained. The Sub-Committee however expressed the opinion that the freight liable should be the gross freight : It is true that the gross freight might in some cases be subjected to calculations, for instance, when — as is the custom for large shipments — part of the freight is repaid as a

commission. Then it was observed that the liability on the gross freight would weigh very heavily on the English « Single ship Companies », these Companies, having no other property than their ship and her freight ; if then, after a collision, the gross freight entirely should be liable for the damage occasioned, they would be compelled thereby to stop their trade altogether, as they would have no other means at all to organise further voyages.

But these considerations seemed of secondary importance. The definition adopted at Liverpool, namely « that by net freight is meant the gross freight, deduction being « made of the charges which are proper to the same, » appeared at any rate deficient. The Sub-Committee also hesitated to consider the net freight as being merely a quota of the gross freight, for instance one half or one third of it. Finally, as the English members also expressed themselves in favor of the gross freight, the Sub-Committee deemed themselves justified to recommend this latter solution, altough it differs somewhat from the Liverpool-Resolutions.

Further, it was agreed that, as to the liability of the freight, no distinction ought to be made, whether the freight was prepaid or still due.

Finally, it was decided that the freight liable towards the creditors should be the freight as per charter-party, and not that as per bill-of-lading.

ACCESSORIES

According to the draft-treaty, the contributions to General Average were included, without any exception, in the estate which is liable ; so when a mast is cut, as a General-Average sacrifice, and replaced by a new one, the creditors would not only have the benefit of the new

mast's value, but even of the share which the cargo-owners would have to pay to the owner for this new mast. It was therefore remarked that contributions to general average ought only to be included in the object of the liability when they represented a damage still existing, i. e. a sacrifice made or a damage incurred in General-Average not yet repaired ; but that there was no reason at all to include in the liable estate amounts due to meet General-Average expenses (for instance costs of towage) and that, if amounts representing damages already repaired were included, the result would be to give to the creditors an advantage quite unjust, and to put as unfair a disadvantage on those who suffered the damage, viz that outside of the object of their lien, already repaired, the creditors should still arrest the amount destined to pay the repairs. It was therefore resolved that contributions to General-Average would only be included in the liable estate so far as these amounts should represent material damages suffered by the ship and not yet repaired.

As the freight is also liable towards the creditors, it will be well to add a provision, to the effect that contributions to General-Average for loss of freight must also be taken into account.

As a matter of course, the same principles must apply to salvage-indemnities accruing to the ship. If the Sub-Committee go still farther and allow to the creditors a lien on the salvage-indemnities, without any exception, it is on the ground that the salvage-indemnity is a fruit of the ship and must, in some sense, be put on the same footing as freight itself. But such resolution goes beyond that of the Liverpool Conference. For such undertakings as earn their profits, not by carriage of goods, but solely by assisting and salving other ships, this last provision is surely justified, but if it must be extended to all

vessels whatever, it is to be feared that then it might induce some ships not to lend assistance to others.

The lien on the indemnities – such as it is also admitted in German law, — applies to all kinds of damages suffered by the object of the lien, as far as there is such a claim. These are the « indemnities for repair of any injury » of article 4 sub 2°. The Sub-Committee, when adding the words « sustained by the vessel », again omitted the freight.

In order to put beyong any doubt that subventions or national subsidies must not be considered as fruits of the ship which may be liable towards the creditors, these items have been expressly mentioned, together with the moneys due or payable in respect of contracts of insurance.

Consequently, in the draft of the Sub-Committee, article 4 (which has become article 3) is as follows :

The freight mentioned in article 2 is the hire or freight coming to the owner of the vessel without deduction whether the question arises in reference to freight or hire paid in advance to freight or hire already due or to freight or hire payable in any event.

Passage money is in the same position as freight.

The accessories mentioned in art. 2 are :

1° Contributions due to the owner of the vessel for general average losses in so far as such losses constitute material damage sustained by the vessel but not yet repaired ;

2° Damages due for the repair of any injury sustained by the vessel.

3° Sums of money coming to the shipowner for salvage.

Money due or payable in respect of contracts of insurance, premiums, subvention or orther national subsidies shall not be considered accessories of the vessel.

Article 5 of the French draft was as follows :

The shipowner may substitute to the vessel its value at the end of the voyage, or the sum realised in case of forced sale prior to the termination of the voyage.

This was article 3 of the Liverpool draft. The alteration made in purely formal ; it now runs as follows :

The shipowner may substitute for the vessel its value at the end of the voyage or the total sum realised in case of sale persuant to the order of a Court, before the termination of the voyage.

Article 6 of the French draft was as follows :

In every case the shipowner shall have the right to obtain the release of the vessel and the accessories, by the payment of an indemnity limited, for each voyage, to eight pounds sterling per ton on the gross tonnage.

This was article 4 of the Liverpool draft. Its modification was also purely formal.

Article 7 of the French draft provided :

The preceding provisions shall apply to liabilities arising out of an obligation to raise the wreck of a vessel in case of stranding.

They shall not apply to liabilities arising from the personal default of the owner.

They shall not apply to the obligation to pay the wages of the master and crew, which is a personal obligation of the owner.

This article corresponds to article 6 of the Liverpool draft. A provision was added to the effect that the liability of the owner shall be also limited for the raising of a wreck. This new provision is in conformity with the German law. It was inserted with a view to those countries where the owner is personally liable for these

expenses. In order to avoid any misconstruction, the Sub-Committee stated that in such cases, the limitation of liability should apply, by right, without considering whether the accident was due or not to the crew's fault.

It appeared that article 3, as well as article 7 of the Liverpool draft, were needless, the cases where the draft-treaty applies having been specified very accurately : they were therefore struck out.

These provisions are embodied in article 9, as follows :

The preceding provisions shall apply to liabilities arising out of an obligation to raise the wreck of a vessel whether the wreck was occasioned by the fault of the Captain or not.

They shall not apply to liabilities arising from the personal default of the owner.

Article 8 of the French draft was as follows :

If any amounts are raised out of the ship or her freight by creditors having a priority lien or a privilege on same by reason of personal debts of the shipowner, the latter shall be personaly bound to make up in specie such amounts to the creditors who have only a lien on the ship and accessories under the above determined conditions.

This article corresponds to article 5 of the Liverpool draft. It provides that the shipowner who shall have raised money of his ship and freight in order to satisfy mortgagees or privileged creditors, towards whom he was also personally liable, must make up from his own pocket, to the total value of ship and freight towards such creditors for which he is entitled to limit his liability to ship and freight. The Sub-Committee preferred the wording of the Liverpool-draft, so that the present article 4 provides :

If there exists in favour of creditors any right of priority on the vessel or freight with regard to which no limitation of

liability is permitted, the shipowner shall be liable to make up the amount forming the limit of his liability by a payement equal to the sum for the recovery of which such creditors may avail themselves of their right of priority.

Maritime Draft-treaty on Mortgages an Liens

As to this subject, the Liverpool Conference did not take any resolutions binding the Sub-Committee, whose members had therefore free hands in the drafting of that Code.

Also for this subject, the French Association had prepared a draft-treaty, which served as a basis for the discussion by the Sub-Committee (*).

(*) The text prepared by the French Association is as follows :

ARTICLE 1. — Hypothecations, mortgages and securities on ships duly made and registered in any of the contracting states shall be acknowledged in all other countries and shall therein have the same effect as in the country of their origin, without prejudice to the provisions herein contained respecting maritime liens.

ART. 2. — Maritime liens shall rank in priority to hypothecations and other similar rights.

ART. 3. — The following liabilities shall give rise to maritime liens upon the ship and net freight due in respect of the voyage in the course of which the liability came into existence, and shall take rank in the following order.

1° Court fees, taxes and public charges the cost of watching warehousing and preservation ;

2° Money due for salvage, towage and general average losses ;

3° Wages of the master and crew since the date of the last signing on ;

4° Money due in respect of a collision or any other accident for which the ship is liable ;

5° Masters disbursements advances made to him for necessaries

Besides, this French draft-treaty is, broadly speaking, in conformity with the Liverpool draft. The few points on which it slightly deviates therefrom are specially mentioned hereafter.

Article 1 of the French draft was as follows :

Hypothecations, mortgages and securities on ships duly made and registered in any of the contracting States, shall be acknowledged in all other countries and shall therein have the same effect as in the country of their origin, without prejudice to the provisions herein contained respecting maritime liens.

This article is in conformity with art. 1 of the Liverpool draft and leaves the regulation of mortgage-rights to the national laws. It is neither necessary, nor possible, to have on this point an international regulation. But it was unanimously recognised that the existence of such mortgage-liabilities should be made known everywhere, and on that head, an international agreement seems possible. It was advocated on one side that hypothecarian rights

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during the last voyage, bottomry loans, damages for loss or short delivery debts due for repairs, supplies, victuals, outfit and labour ;
6° Insurance premiums.

Art. 4. — Save in so far as applies to the wages of *the mariners*, the priorities of the liens inter se shall be determined by the date of the liabilities which gave rise to them, the most recent always taking precedence.

Art. 5. — The validity of obligations which give rise to a maritime lien shall be determined by the law of the place where they came into existence, hypothecations by the law of the flag.

Art. 6. — A maritime lien shall come to an end at the expiration of one year from the time when the creditor was in a position to enforce it,

Art. 7. — The maritime lien on freight shall take effect only upon so much of the freight as is still due or is actually in the hands of the Captain.

should be acknowledged only when their existence and their extent are mentioned in a register always on board the ship, f. i. the ship's certificate, in order that all persons having to deal with the vessel might previously satisfy themselves whether it is worth any credit. But it was objected on the other hand that a provision of this kind would either oblige or prevent the different States to modify their laws relating to the registration of their ships; whilst it would be much more easier for a creditor to ask informations by wire before advancing any money to a ship. So, it was decided not to adopt any such provision, and to maintain article 1, with only such slight modifications as will appear in the text.

Article 2 of the French draft was as follows :

Maritime liens shall rank in priority to hypothecations and other similar rights.

This is again in conformity with article 2 of the Liverpool draft; it was approved with a slight modification to the wording.

Article 3 of the French draft was as follows :

The following liabilities shall give raise to maritime liens upon the ship and net freight due in respect of the voyage in the course of which the liability came into existence and shall take rank in the following order :

1° Court fees, taxes and public charges, the cost of watching warehousing and preservation ;

2° Money due for salvage, towage and general average losses;

3° Wages of the Master and crew since the date of the last signing on ;

4° Money due in respect of a collision or any other accident for which the ship is liable ;

5° Masters disbursements advances made to him for the necessaries during the last voyage, bottomry loans, damages

for loss or short delivery, debts due for repairs, supplies, victuals, outfit and labour;

6° Insurance premiums

This draft deviates from that of Liverpool on the following points :

1° It extends the right of the creditors also to the freight;

2° It does not grant a privilege for pilotage costs ;

3° It does not limit to the 13 last months the lien for wages ;

4° It gives also a priority-lien to the insurance premiums.

During the discussion, the Italian delegate opposed the notion of putting the lien on the freight on the same footing as that on the ship and subjecting it to the same rules. He argued that the freight was in no way an accessory of the ship, but on the contrary, under the legal point of view, quite alien from the ship and that even for that reason the Italian law submits same to special rules. For instance, the crew, for their wages, have a privilege only on the freight and not on the ship. It was contended that this distinct treatment of the ship and the freight was also in conformity with French law. But the French delegates have shown how far this distinction is annoying, as according to French law this same privilege of the crew bears on the ship, and not on the freight. This always involves a double litigation, and increases the costs accordingly. Further, the apportionment of freight arrived at by such litigation is always fought against, for the very reason that the French law has not regulated the rights existing upon the freight.

So it seemed best to adopt the views of the English delegates who explained that according to British law, the freight, as being a necessary accessory of the ship, is liable to the same extent towards the creditors. This the

Sub-Committee finally decided to do, with the exception of the Italian delegates who voted against it.

But it was necessary to alter the wording of paragraph 1 of article 3, as the object of the liability was to be determined in accordance with the decisions arrived at on Limitation of Shipowners' Liability.

The English delegates then remarked that for the sake of maritime credit itself, it is desirable to reduce as much as possible the maritime liens : the smaller their number, and the greater will be the security of the mortgages; and if the maritime mortgage is strongly established, the maritime credit will have a basis the more sound. Now, there is no more any reason to give a lien for all such claims as arise from the exercise of the legal capacity of the Master. Owing to the large extent of the industry of carriage by sea, and to the security and the rapidity of the international communications, it is now possible to obtain money everywhere, within the shortest delay without the creditor's wanting any lien to secure his rights : if he wants to run no risks, he may take a mortgage on the ship and on the freight, and then he will be sufficiently protected as it is always open to him to arrest the ship.

There is no more reason to provide a lien for general average. In most cases, the right of retention consitutes a most effective protection.

The English delegates therefore proposed to maintain only the privileges contained in article 3, sub 1, 3 and 4, together with the lien for salvage, and to strike out all others.

Against this, it was argued that in such case, the owner might encumber his ship with fictious mortgages ; that the cargo could then be lost or damaged and that the cargo-owner would have no remedy. But thereto it was answered that this would hardly be possible : it would always rest

with those suffering the loss to enforce their rights by seizing and suing the ship : the owner would certainly, by all means, try to avoid a judicial sale of his vessel.

It was expressly resolved that the privileges of common law, for instance that of the Seamen professional Union (Seeberufsgenossenschaft) and of the Insurance-Institute (Versicherungsanstalt) as established by art. 754, 10 of the German Commercial Code, the lien provided by article 5 of the Harter Act, and all other similar rights, would be included under Nr. 1, as « taxes and public charges ».

The Sub-Committee quite agreed with the views put forward by the English delegates. These latter expressed the wish « *that this radical modification, together with the other resolutions of the Sub-Committee, should be submitted in all countries to the parties interested, for examination. They stated that in England already, the principal representatives of Shipping, Commerce and Insurance had come into contact on these subjects, and had expressed the hope to see this example followed in the other Countries. That if these modifications are approved by the Commercial bodies, the legal profession would deem it their duty to put these reforms into a legal form. After receipt of the opinions which should be expressed in this way, the Sub-Committee would hold another meeting and again examine the draft-treaty, taking notice of the wishes thus expressed. The result of that new examination would then be submitted for approval to the next International Conference of the Maritime Committee.*

With reference to some questions of detail, it was decided to put into second order the claims for wages of the crew, and to limit same to the last six months, whilst the lien for collision-claims should be extended as far as possible.

This latter point was opposed by some of the members, and none of the least influential ; it was even contended

that the desirability of a lien for collision claims was still a question much disputed ; but that even when granting a lien for such claims, it should be restricted as much as possible.

But the majority expressed their opinion to the contrary, and decided not only that the suffering vessel, the persons and goods on board of same, would have a lien on the colliding ship, but that the suffering parties would have a lien even on such ship as would, through his wrong navigation, cause a collision between two other ships without coming herself into collision. Consequently, article 3 is now worded as follows :

The following liabilities shall give rise to maritime liens on a ship, her accessories and freight due in respect of the voyage in the course of which the liabilities arose, and shall take rank in the following order (see arts 2 and 3 of the draft-treaty on the liability of shipowners).

1° Court fees, taxes and public charges and the expenses of warehousing, watching and preservation ;

2° The wages of the master and crew since the date of the last signing on up to a maximum of six months wages ;

3° Money due for salvage;

4° Money due to the owners of another ship, or of her cargo or to her crew or passengers in respect of a collision or other accident arising from some act or default for wich the ship is to blame.

Then came the question wheter any other privileged rights or liens on the ship or on the freight should continue to exist.

It was held there are no reasons to give a lien to shipbuilders for building or repairing : the shipbuilders and repairers have other means to protect their rights.

In French law, the Insurer has also a lien for his premium, and the seller of the ship for her price.

The Italian delegates maintained that this latter lien (which exists also under the Italian law) could not be omitted; but the other members thought it better not to admit any other liens than those obtained through judicial proceedings (arrest), and enumerated in the new wording of article 3.

On these matters, uniform rules, as simple as possible, are of real necessity for the sake of security and soundness of maritime credit, which suffers heavily by the existing unknown liens.

Article 4 of the French draft was as follows :

Save in so far as applies to the wages of the mariners, he priorities of the liens inter se shall be determined by the date of the liabilities which gave gave rise to them, the most recent always taking precedence.

This article widely differs from the corresponding art. 5 of the Liverpool draft, as, with the exception of the lien for the crew's wages, all claims against the ship rank in the inverse order of dates, without however settling the question of priority for similar claims, arisen at different voyages, but coming on simultaneously.

But the Sub-Committee did not think so : the principle according to which the claim of latest date will rank prior to that which arose previously, shall only apply, as to the remaining liens, to that for salvage-indemnity.

The Sub-Committee therefore preferred the wording of article 5, paragraph 2, of the Liverpool draft, but with an addition relating to salvage-claims; it is now worded as follows :

Maritime liens shall rank in accordance with the priorities laid down in art. 3. Liabilities appearing in the same class shall share reteably with the exception of liabilities for salvage which

shall rank in the inverse order of the dates on which they came into existence.

Several members of the Sub-Committee expressed the opinion that when claims refer to different voyages, those of the last voyage should rank prior to the other, and that therefore, paragraph 1 of the Liverpool draft should be maintained. It provided :

« In case the privilege is not restricted to claims arisen » during the last voyage, the order of the liens will be » inverse to that of the dates of the voyages ».

This would be conform also to German law, save for the wages of the crew. But as doubts were expressed as to the equity of this principle and as, on the other hand, this question had not yet been touched at the conferences of the International Maritime Committee, it was decided to leave it open to the Conference, who will have to decide themselves.

Article 5 of the French draft was as follows :

The validity of obligations which give raise to a maritime lien shall be determined by the law of the place where they came into existence, hypothecations by the law of the flag.

This article also differs from the corresponding art. 4 of the Liverpool draft. This latter provided that the justification and prescription of mortgage rights should be regulated by the law of the flag, or by the law of the place where they arose. Article 5 of the French draft, on the contrary leaves the solution of the question to the law of the flag where it concerns mortgages, and to the law of the place of origin as far as liens are concerned.

It was objected that it would very difficult, for the reasons expressed under article 1, to regulate by an international law the rights arising from mortgages, and that,

as far as liens are concerned, it was hardly possible to refer to the law of the place of origin, as such liens could also arise on the high seas.

Therefore, article 5 was struck out, no notice being taken of the Liverpool draft.

One should however ask whether this question is not worth to be solved. In any case, the next Conference shall have to examine again article 4 of the Liverpool draft.

Article 6 of the French draft was as follows :

A maritime lien shall come to an end at the expiration of one year from the time when the creditor was in a position to enforce it.

Article 6 of the Liverpool draft merely provided a delay of prescription of one year and added that as to the effects of transfer of property of the ship on the existing privileges, the national law should be followed.

The French Association, in their draft, added that the maritime lien shall come to an end after one year from the time when the creditor was in a position to enforce it, — this in consequence of the objections raised, at the Brussels Diplomatic Conference, by the British delegates, against too short a period of prescription. In England, a prescription does not exist, but the judge may reject the claims if he thinks they were not brought in due time, i. e. with more than reasonable delay; so it may happen that claims are rejected, for this reason, afters a few months, whilst other claims are admitted, even after ten years.

The addition made to this article relates to those remarks.

The Sub-Committee preferred not to resolve the question of prescription.

Article 6 (which becomes art. 5, the former article 5

having been struck) will serve as a basis for a new discussion by the Conference.

As to the effect of the transfer of property on the existence of privileges and liens, it might well be regulated internationally, were it but for the sake of the purchasers. But the question whether such understanding is possible, and in what way, was reserved for later discussion. Besides, this question comes after that of prescription and should be examined together with article 6 of the Liverpool draft, if the Conference should take up again the discussion of same.

The new article 7 is as follows :

The maritime lien on freight shall take effect only upon so much of the freight as is still due or is actually in hands of the Captain.

This artile means that the lien on the freight does not cease by the payment of the freight to the Master, but only when the owner himself has actually cashed the freight. In order to avoid all doubt, the Sub-Committee decided to modify the article as follows :

« ...... to so much of the freight as has not been actually
» received by the shipowner in person ».

This means therefore that a cession of the claim for freight does not involve that the lien on same should come to an end.

The provisions relating to liens on the ship must therefore still be completed as to the effects of transfer of possession or property of the ship ; and the provisions as to liens on the freight are to be completed with relation to the personal obligation of the shipowner to make up the amount of freight.

Léon Hennebicq
Alfred Sieveking
Committee-reporters.

INTERNATIONAL MARITIME COMMITTEE

« Questionnaire » on Freight

GENERAL QUESTION

A. — On which points should conflicts of Law as to Freight be settled internationally ?

B. — What are, in each case, the best solutions to be recommended ?

First Question

Freight pro rata itineris

Is any freight due when the vessel is lost during the voyage but the cargo saved wholly or partly ? In what proportion, and on which basis ?

Second Question

Of freight, in case the cargo is sold

Is any freight due for goods sold during the voyage

1° for the needs of the vessel,

2° in consequence of their damaged state

a) if owing to a « vice propre »,

b) if owing to accident (fortune de mer).

In what proportions and on which basis ?

THIRD QUESTION

Of Freight in case the vessel is declared unseaworthy.

Is any freight due when the vessel is declared unseaworthy at the port of refuge or cannot complete the voyage, but when the cargo is reforwarded by another vessel and reaches its destination ? On what basis and in what proportions ?

FOURTH QUESTION

Question of Half-freight and Dead-freight

In the case where the charterer cancels the voyage before loading, or loads only part of the engaged cargo, — shall the indemnity due (half-freight or dead-freight) be fixed legislatively, or should the question be referred to the common law as to damages ?

FIFTH QUESTION

Delay in loading or discharging

Shall demurrage be considered as an additional freight, or as an indemnity ?

Will the debition of same be subordinated to a written protest, at least by correspondence ?

FRANCE

FRENCH ASSOCIATION OF MARITIME LAW

Conflicts of Law as to Freight

NOTE on the various legislations compared

by Monsieur LÉON ADAM

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PRELIMINARY REMARK

The questions relating to « Freight » put by the International Maritime Committee and inscribed on the agenda-paper of the next Venice-Conference, have been made the objects of very precise provisions in most of the commercial and maritime Codes.

It seemed to us of a paramount importance that one should have the articles of the various codes on the matter before him, so that, during the discussion, one may be enabled to refer to same without being obliged to go through the whole of the codes. In fact, the question is now to find the means to conciliate provisions and prescriptions which found their origin in notions, often differing, of the various peoples and finally embodied in the law by jurists who were far distant one from another. If the first codes could be taken as a pattern by the authors of the later systems of maritime legislations, the aims of the efforts towards Unification of Maritime Law require a nearer contact of the efforts, and first of all, an easy comparison of the texts to be unified.

Those texts we have tried to put together, all following in the same order for each of the questions which the Committee has submitted for examination.

The order of enumeration of the extracts from foreign codes might vary for different reasons: similarity of the provisions, identical origin of the legislations, or merely the alphabetic rank of the nations. Each of these first two modes of classification, if it can be exact for one question, will not be right for the other, and as to the alphabetic rank, it might lead us to put together such documents as are wholly dissembling, or belonging to nations whose views and interests are in complete opposition or who are far distant from each other.

We therefore adopted, for the classification of the foreign laws, the method adopted since its origin in the *Annuaire de législation étrangère,* published by the *Société de législation comparée* : i. e. geographical order and grouping of the nations according to certain affinities of their origin and traditions.

First, we set France, as this work is due to the initiative of the French Association of Maritime Law. After our Code of Commerce, we have reprinted the corresponding provisions of the *Draft of a new code of maritime commerce,* submitted to our Association by M. Georges Delarue, advocate at the Court of Appeal of Paris, one of the first and the most devoted members of the Association. His draft, which is the result of numerous studies of comparative law, and is based on a long and precious experience, will be most useful to those who consult it. To allude to it was a duty for us, and at the same time an opportunity to testify to him our just and respectful hommage.

After France, we have mentioned extracts of the codes or of the special laws of the other countries, in the following order :

BELGIUM,
GERMANY,
ITALY,
SPAIN,
PORTUGAL,
THE NETHERLANDS,
THE SCANDINAVIAN STATES : DANMARK, SWEDEN AND NORWAY, FINLAND,
RUSSIA,
RUMANIA,
EGYPT,
MEXICO,
ARGENTINE REPUBLIC,
CHILE,
JAPAN.

Great-Britain has neither Code of Commerce nor special law from which we may extract a precise text on questions of freight. The same remark for Austria-Hungary. Some codes of commerce, f. i. those of Peru, Guatemala, &c. are only copies of the codes of the three American Republics we mentioned.

As for the United-States, they have only, like Great-Britain, some documents of doctrine and jurisprudence which cannot come within the limits of the present work.

We felt bound to explain the absence of law-texts for the countries just mentioned. Besides, it will always be easy to complete under this head this comparative study, which we are the last to consider as absolute and still less as definitive.

LÉON ADAM.

French and foreign codes mentioned in this work·

France. — Code de Commerce. Projet d'un nouveau code de commerce maritime, presented in 1903 to the French Association of maritime Law, by M. Georges Delarue.

Belgium. — Law of 21 August 1879, on Maritime commerce.

Germany. — Code of Commerce of 1897. Translation of M. Paul Carpentier (Paris 1901, A. Chevalier Marescq & C°, edit.)

Italy. — Code of commerce of 1882 : translation of M. Edmond Turrel (Paris, 1892, Pédone, edit.)

Spain. — Code of commerce of 1885 : translation of Mr. Henri Prudhomme. (Paris, 1891 ; Pédone, edit.)

Portugal. — Code of commerce of 1888, translation of M. Ernest Lehr (Paris, 1889, Impr. Nat.)

Netherlands. — Code of commerce of the Netherlands of 1830, with modifications up to Septemb. 1st 1886 : translation of Mr. Gustave Tripels (Maestricht 1886, Germain & C°, edit.)

Scandinavian States. — The Swedish codes : Code of maritime Commerce of 1891 : translation of M. Raoul de la Grasserie (Paris 1895, Pédone, edit.)

(The same code has been adopted for *Danmark*, *Sweden*, *Norway* and *Finland*.

Russia. — Code of commerce of 1893 : translation of M. J. Tchernow, (Paris, 1898, Pédone, edit.)

Rumania. — Code of commerce of 1887 : translation of M. J. Blumenthal (Paris 1889, Pichon, ed.)

Egypt. — Code of commerce : official translation & edition of 1884 (Cairo, 1884, Barbier & C°, ed.)

Mexico. — Code of commerce of 1889 : translation of M. Henri Prudhomme (Paris 1894, Pedone, ed.)

Argentine-Republic. — Code of commerce of 1889 : translation of M. Henri Prudhomme (Paris 1893, Pedone, ed.)

Chile. — Code of commerce of 1865 : official edition of 1889 : translation of M. Henri Prudhomme (Paris, 1892, Pedone, ed.)

Japan. — Code of commerce : translation of M. Ludwig Lönholm (Paris 1898, Larose & Forel, ed.)

GENERAL QUESTION

A. — On which points should Conflicts of law as to Freight be settled internationally?

B. — What are, in each case, the best solutions to be recommended?

Beyond the special questions which are the object of the five questions following hereafter, conflicts of law may arise on two general points:

The competency and *the law to be applied.*

The report of our distinguished colleague, Mr. Denisse, has already dealt with these questions; we leave it to him to come back on same. We shall merely add to the documents he referred to, the very interesting study of our excellent colleague and friend, Mr. Henri Fromageot: « De la loi applicable aux obligations et spécialement à la » responsabilité résultant pour les armateurs des contrats » d'affrètement par charte-partie ou par connaissement ». (Revue intern. du droit maritime, published by Mr. Autran, 18st year, page 742). Mr. Fromageot, advocates, and for very good reasons, *the law of the flag.*

In the various codes, we only found the two following texts who decide on this question as to freight:

Code of commerce of the Netherlands:

ART. 498. — If foreign ships are chartered in the kingdom, the masters of these ships are submitted to the provisions of this code. The same provisions apply to masters as to the discharge of their vessels or any other acts to be

executed within the kingdom when the charter has been concluded in foreign countries.

Comp. art. 458. (Loading and discharging in foreign ports; demurrage. See 5th question).

Argentine code of commerce :

ART. 1091. — The contract of affreightment of a foreign ship, which must be executed within the Republic, must be judged according to the rules provided in the present code, whether this charter be concluded within or without the Republic.

FIRST QUESTION. — **Freight pro rata itineris. — Is any freight due when the vessel is lost during the voyage but the cargo saved wholly or partly? In what proportion and on what basis ?**

French code of commerce :

Art. 302. — No freight is due for cargo lost through a shipwreck or a stranding, plundered by pirates, or taken by the enemy.

The Master shall refund the freight paid in advance, unless otherwise agreed.

ART. 303. — If the ship and the cargo are redeemed, or when the cargo is saved from shipwreck, the master is entitled to the freight up to the place of detention or of shipwreck.

He is entitled to receive the whole freight, when contributing to the redemption, if he carries the goods to their place of destination.

ART. 304. — The contribution for the redemption is to be effected on the current price of the goods at the place where they are discharged, under deduction of the expenses, and on half the ship and freight.

Wages of the crew are not included in the contribution.

Draft of new code of maritime commerce by M. G. Delarue :

ART. 301. — Freight is due only in proportion to the distance effected.

. . . .

3° when the goods are saved from shipwrech or redeemed after having been captured, by the charterers.

Belgian law of August 21st 1879 :

ART. 97. — No freight is due for goods lost through shipwreck or stranding, plundered by pirates or taken by the enemy.

The Master shall refund the freight paid in advance, unless otherwise agreed.

No freight is due for goods which, after shipwreck or after the ship being declared unseaworthy, shall not reach their destination.

. . . .

ART. 98. — The Master who has contributed to the salvage or to the redemption of the goods which afterwards do not reach their destination, is entitled to an indemnity which shall be fixed by the Courts if parties do not agree.

Code of commerce of the German empire :

ART. 630. — If owing to the perils of the sea, the ship is lost (art. 628, nr 1) after the beginning of the voyage, the contract of affreightment is at an end. However, if goods have been put out of harm's way or saved, the charterer must pay freight in proportion to the distance effected on the whole of the voyage (distance-freight).

Distance-freight is due only when it does not exceed the value of the goods saved (1).

(1) Note of the translator : *a*) If the master sells, after shipwreck, goods not yet salved and such as they are, they must however be considered as having been saved, and distance-freight shall be due up to the produce of the sale. Jur. of the Tribunal of the Empire, XIII, 31.

b) If it is stipulated in a charter-party that the ship shall deliver a cargo in a port named and shall bring therefrom another cargo, but that freight shall only be due for the voyage back, and if the ship is

ART. 631. — The distance-freight is to be calculated by taking in account, not only the proportion of the voyage already effected in regard to the distance remaining to be sailed over, but also a proportional part of the expenses, loss of time, risks and efforts relating to that part of the voyage which was effected compared to the part remaining to effect.

Italian Code of commerce:

ART. 577. — No freight is due for goods lost through shipwreck or stranding, plundered by pirates or taken by the enemy; the Master has to refund the freight paid in advance, unless it be otherwise agreed.

ART. 578. — If ship and cargo are redeemed, or if goods are saved from shipwreck, the Master is entitled to the freight up to the place of capture or shipwreck.

He is paid for the whole freight when contributing to the redemption, if he carries the goods to their place of destination.

Contribution for the redemption is to be effected on the current price of the goods at the place of discharge, under deduction of the expenses, and on half the ship and freight.

Wages of the crew are not included in the contribution.

Commercial code of Spain

ART. 661. — Freight shall be due neither for goods lost through shipwreck or stranding nor for goods taken by pirates or by the enemy.

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lost during this second voyage, distance-freight shall have to be calculated not only on the distance effected on the return voyage, but also of the first voyage. Id. II, 55.

If freight has been prepaid, it shall be refunded, unless otherwise agreed.

ART. 662. — If the ship or the cargo are redeemed, or if the effects are saved from the shipwreck, freight shall be paid proportionally to the distance effected by the ship when carrying the cargo, and if, after repairs, the ship carries the cargo to the port of destination, the whole freight shall be paid, without prejudice as to the contribution to general average.

Code of commerce of Portugal :

(No special article).

Code of commerce of the Netherlands

ART. 483. — If the ship and the cargo are redeemed or ransomed, or if the merchandise is saved from the shipwreck, freight is due up to the place of capture or shipwreck, in proportion to the freight contracted for, if the voyage cannot be completed.

The freighter or the Master are entitled to the whole freight if the captain carries the redeemed or ransomed goods to the place of their destination.

In the events provided for in the paragraphs first and second of this article, the freighter or the Master contribute to the redemption price or to the custody-charges by way of general average.

ART. 484. — If goods having belonged to the cargo, have been saved from sea or on shore, without any cooperation of the Master, and have been subsequently delivered to the parties interested, no freight is due for these goods.

Scandinavian code of commerce :

ART. 160. — When the ship is lost during the voyage,

or when she cannot be repaired, the contract of affreightment shall be cancelled *ipso facto* ; but the Master shall be obliged take the measures provided in article 57 for account of the owner of the cargo (1).

Freight shall be due only in proportion of the distance effected in comparison of the whole voyage contracted for, taking however into account the time necessary for the voyage, the special difficulties and the expenses, in proportion of that part of the voyage which remains to be sailed. In case parties do not agree, arbitrators shall fix the freight to be paid.

Rumanian code of commerce :

ART. 587. — Freight is not due for the things lost by shipwreck, plundered by pirates of taken by enemies and the Master has to refund such freight as was paid in advance, unless otherwise agreed.

ART. 588. — If the ship and the cargo are redeemed or saved from the shipwreck, freight is due to the Master up to the place where the ship was plundered or wrecked; but if he carries the goods loaded to their place of destination the whole freight is due to him, provided he contributes for his share to the redemption.

The contribution to the redemption is effected on the current price of the cargo at the place of discharge, under deduction of the expenses, and on half the value of ship and freight.

Wages of the seamen are exempted from contribution.

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(1) Viz. to ask instructions from the owner of the cargo or from his representative. If impossible, reforward the cargo by another ship to its destination at the lowest freight possible; or unload the goods and sell them on auction.

Egyptian code of maritime commerce :

ART. 122. — If the ship and the cargo are redeemed, or if the goods are saved from the shipwreck with the assistance of the Master, this latter is entitled to the whole freight up to the place of capture or shipwreck, if he cannot carry them to their place of destination.

If the Master has not cooperated to the salvage, no freight shall be due for goods saved at sea or on shore and subsequently delivered to the parties interested.

Mexican code of commerce :

ART. 736. — No freight shall be due for goods lost by shipwreck or stranding, or for goods captured by pirates of by the enemy.

If freight has been prepaid, it shall be refunded, unless otherwise agreed.

ART. 737. — If the ship of the cargo are redeemed, or if the goods are saved from the shipwreck, freight shall be paid in proportion to the distance effected by the ship carrying the cargo ; and if, after repairs, the ship carries further the cargo to the port of destination, the whole freight shall be paid, without prejudice as to the contribution in general average.

Argentine code of commerce :

ART. 1087. — No freight is due for goods lost in consequence of shipwreck, nor for goods which were captured by pirates or by enemies ; if on such goods, freight has been prepaid, if shall be refunded, unless it has been expressly agreed otherwise.

ART. 1088. — If the ship or cargo are redeemed, or found to be wrongly captured, or saved from shipwreck, freight

is due up to the place of capture or of shipwreck in proportion to the whole freight stipulated, and if the Master carries the goods to the port of destination the whole freight shall be paid and the damage or redemption price shall be apportioned by way of contribution, as a general average.

If the Master carries the goods to another port than the port of destination, on account of it being impossible to him to proceed farther, the freight is due up to the port of call.

ART. 1089. — No freight is due for goods belonging to the cargo, which were saved on the high seas or on shore without cooperation of the crew, beside the cases provided for in article 1086 (jettison of cargo for common safety) and delivered by third parties.

Chilian code of commerce :

ART. 1028. — No freight is due for goods lost in consequence of shipwreck or stranding, stolen by pirates or captured by force by the enemies.

In any case, the charterer has the right to claim restitution of the portion of freight paid by him in advance.

ART. 1029. — If the goods have been salved or redeemed, the charterer shall pay the freight earned up to the place of shipwreck or capture.

If the ship, after having been repaired, carries the salved goods to the port of destination, the charterer shall pay the whole freight, without prejudice as to what will be decided re general average.

ART. 1030. — No freight is due for the goods salved at sea or on shore, without cooperation of the Master or crew.

Japanese code of commerce

ART. 610. — A total affreightment of a ship comes to an end :

1° in consequence of the reason specified in art. 584, 1 (if the ship is lost).

2° when the goods are lost by a « force majeure ».

If the case provided for in article 584, 1, occurs during a voyage, the charterer is bound to pay freight in proportion to the distance effected; however the sum to be paid may never exeed the value of the goods.

ART. 611. — (Object of the voyage not arrived at: law or ordinance, « force majeure »; proportional freight when the voyage has commenced).

ART. 613. — The provisions of articles 610 and 611 apply, by analogy, to a chartering of part of a ship, or to a voyage where the ship is loaded on the berth.

If the motives specified in the articles 610, 1 nr. 2 and 611, 1, only affect part of the cargo, the charterer or the loader may cancel the contract against payment of the whole freight.

SECOND QUESTION. — Of freight, in case the cargo is sold. — Is any freight due for goods sold during the voyage:

1° for the needs of the vessel, 2° in consequence of their damaged state,

***a*) if owing to a « vice propre » *b*) if owing to accident (fortune de mer).**

In what proportions and on which basis ?

§ 1. — NECESSARIES OF THE SHIP

French code of commerce

ART. 234. — When, during the voyage, it becomes necessary to repair the ship, or to buy victuals, the master, after having stated it in a written report signed by the principal of the crew, shall be allowed, after having been authorized in France by the Tribunal of Commerce, or failing it, by the Justice of the peace, or in foreign parts, by the French Consul, or failing him, by the local magistrate, to borrow on the hull or keel of his ship, or pledge or sell cargo up to the amount required for the necessaries in question.

The shipowners, or their representative, the Master, shall account for the cargo sold, according to the current price of goods of the same nature and quality at the place where the ship discharged them, at the time of her arrival.

The sole charterer, or several affreighters, if all are agreed, may object to the sale or pledging of their goods, by discharging them and paying freight on the proportion

of the voyage effected. If part of the charterers do not consent, he who would prevail himself of the option to discharge his goods shall pay the whole freight for his goods.

ART. 298. — Freight is due for such goods as the Master was compelled to sell in order to pay for repairs, victuals and other urgent necessaries of the ship, but he shall account for same on the basis of the value of the remainder of the cargo, or of other merchandise of the same nature and quality at the place of discharge, if the ship reaches her destination.

If the ship is lost, the Master shall account for the goods on the basis of the price at which he sold them, deducting also the freight mentioned on the bills-of-lading.

In both these cases, without prejudice to the right reserved for the shipowners by the second paragraph of article 216.

If in consequence of the exercise of this right, any loss should result for those parties whose goods have been sold or pledged, this loss shall be apportioned proportionally on the value of such goods and of all other which should arrive at destination, or which are saved from shipwreck subsequently to the events which rendered necessary the sale or the pledging.

Draft of Mr. Delarue :

ART. 301. — Freight is only due in proportion to the distance effected :

. . . .

2° If the goods are taken away by the charterer, in order to prevent their being affected to bottomry bonds or their being sold for the necessaries of the ship.

Belgian Law :

ART. 93. — Freight is due for the goods which the Master was compelled to sell in order to buy victuals, pay repairs or for other urgent necessaries of the ship ; but the Master shall then account for their value, on the basis of the price wich the remainder of the cargo, or other similar goods of same quality, will produce by sale at the port of discharge, if the vessel arrives duly at her destination.

If the ship is lost, the Master shall account for the goods at the price he sold them, deducting also the freight mentioned in the bill-of-lading. In both cases under reserve of the rights of the shipowners provided in § 2 of the article 7.

If, in consequence of the exercise of this right, any loss should result for those parties whose goods have been sold or pledged, this loss shall be apportioned proportionally on the value of such goods and all other which should reach their destination, or which were saved from shipwreck subsequently to the events having rendered necessary the sale or pledging.

German code of commerce :

Art. 632. — The cancelment of the contract of affreightment does not take away the obligation for the Master, in case of loss of the ship and in the absence of the parties interested, to take the measures necessary to protect the cargo's interests (art. 535 to 537). Consequently, it is the right and the duty of the Master, — and in case of urgent need, even without having previously asked instructions,— either to have the cargo reforwarded for account of the parties interested by another vessel to the place of desti-

nation, or to deposit these goods. If he causes them to be carried further, or if he puts them in store, he is entitled to sell part of them in order to procure the means for realising such measures and to provide for the preservation of the remainder; if he causes the goods to be reforwarded, he is entitled to contract a bottomry bond on the whole or part of the cargo.

However, the Master is not obliged to part with the cargo or to give it over to the Master of another ship for further transport, before having encashed the distance-freight as well as the other claims of the freighter enumerated in article 614, and the sums due by the cargo for general average-contribution, salvage, assistance and bottomry-bonds, — or before having received bail for such amounts.

The shipowner is liable on the ship, so far as anything has been saved thereof, and on the freight, for the execution of the obligations imposed upon the Master by the first paragraph of this article (1).

Italian code of commerce :

Art. 575. — Freight is due for the goods loaded which the Master was compelled to sell, to engage as a garantee or to dispose of for the urgent necessities of the ship.

He must however refund to the cargo-owners the value of these goods at the port of loading, if the ship arives duly at destination.

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(1) Note of the translator: In case of absence of the parties interested the liability of the Master is at an end as soon as the cargo has been delivered to any person qualified to receive it. The Master is entitled to an indemnity for the expenses, the time lost and the pains taken by him at the place of discharge.

(This article applies to partial affreightment or other. — Art. 641).

If case the ship is lost, the Master must refund to the owners of the goods sold or otherwise disposed of, the price he obtained for same; as to the goods pledged, he has to refund the amount borrowed, deducting however the amount of freight stipulated in the bill-of-lading.

In either case, the owners have the option to abandon the ship.

In all cases where the exercise of this right has caused any loss to the owners of the goods sold, disposed of or pledged, — this loss must be apportioned by contribution on the value of such goods and of all other which reached their destination or were saved from shipwreck subsequently to the events which rendered necessary the sale or the pledging.

Spanish code of commerce :

Art. 659. — Freight shall be due for the goods sold by the Master in order to pay repairs to the hull, the machinery or the ship's furniture, or for urgent necessaries.

The price of these goods shall be determined according to the result of the venture, viz :

1° if the ship safely reaches her destination, the Master shall account for same at the price at which similar merchandise of the same quality is sold at that spot;

2° If the ship is lost, the Master shall account for the goods sold at the price which he himself obtained for such goods.

The same rule shall be followed for the payment of the freight, which shall be wholly due if the ship reaches her destination, and pro rata itineris is the ship is lost.

Portuguese code of commerce :

Art. 555. — The freight for goods sacrificed for the

common safety of the ship and cargo, shall be fully paid in the account of general average.

§ 1° . . . .

§ 2°. — The same shall apply to the freight of such goods as were employed for the necessaries of the ship, if she arrives safely at destination, saving however the obligation to pay to the owners of such goods the value they would have had at the port of discharge.

Code of commerce of the Netherlands :

ART. 480. — Freight is due for the goods which the Master was compelled to sell according to the provisions of article 372.

The whole freight is due if the ship reaches her destinatiou.

Only part of the freight is due, viz in proportion of the distance effected, if the ship is lost.

Scandinavian code of commerce :

ART. 57. — Before borrowing money on, or selling goods, or before acting in any other way for account of the loader, the Master must, as far as possible, previously ask the instructions of the loader or of his representative.

ART. 160. — (See 1-st question).

Russian code of commerce :

ART. 351. — The Master must deliver at destination the goods entrusted to him. However, in the cases provided in art. 249, when the necessary means cannot be provided by borrowing on the ship, the Master may sell or exchange part of the cargo in order to provide the necessary means to

continue the voyage and to deliver, according to the terms of the contract, the remainder of the cargo. In such case, the value of these goods must be refunded to the affreighter or to his assigns, on the basis of the price of these goods at the place of destination. — The owner of the cargo, on his side, may not effect any deduction on the freight, which he must pay as if the whole cargo had been safely delivered at destination.

Rumanian code of commerce :

ART. 585. — Freight is due for the effects loaded which the Master was compelled to sell, to pledge or otherwise to employ for the urgent necessaries of the ship.

However, the Master is bound to refund to the owners the value these goods would have at the place of discharge, if the ship reaches her distination.

If the ship is lost, the Master shall refund to the owners of the goods sold or employed, the price which he himself received for same, and for the goods which were pledged, the amount borrowed, deducting at the same time the freight mentioned in the bill-of-lading.

In both cases, the owners are entitled to effect abandonment.

If any loss should therefrom result for the owners of the goods so employed, sold or pledged, this loss shall be apportioned proportionally on the value of all the goods arrived at destination, or saved from shipwreck after the events which rendered necessary the sale or pledging.

Egyptian code of commerce :

ART. 49. — If, during the voyage, it becomes necessary to repair the ship, or to buy sails, rigging, furniture,

victuals or any other effects of urgent necessity, and if the special circumstances, and the fact that the owners of the schip or of the cargo are too far away to ask for their orders, the Master may, — after having stated the necessity in a written statement signed by the principal of the crew, and after having been authorized by the Tribunal or, failing it, by the civil authority, or, in foreign ports, by the Ottoman consul, or, failing him, by the competent authorities — conclude bottomry bonds on the hull of the ship and her appurtenances, and if need be, on her cargo, or if such loan cannot be obtained wholly or partly, to pledge or to sell by auction the goods up to the amount which the necessities require.

The owners, or their representative, the Master, shall account for the goods sold, according to the current price of goods of the same nature and quality, at the place of discharge of the ship at the time of her arrival.

The sole charterer, or joint affreighters if they all agree, may object to the sale or to the pledging of their goods, by discharging them and paying freight on the proportion of the voyage effected. If part of the charterers do not consent, he who would prevail himself of the option to discharge his goods, shall pay the whole freight for them.

Art. 117. — Freight is due for the goods which the Master was compelled to sell in order to pay victuals, repairs and other urgent necessaries of the ship, accounting for them at the price which the remainder of the goods or other similar merchandise of the same quality will be sold at in the port of discharge, if the vessel safely reaches her destination.

If the ship is lost, the Master shall account for such goods at the price at which he shall have sold them,

deducting the freight in proportion of the distance effected.

In both these cases without prejudice to the right for the shipowners provided in § 2 of article 304 (abandonment).

If any loss should result from the exercise of this right, for the owners of the goods sold or pledged, this loss shall be apportioned proportionally on the value of those goods and of all other goods having reached their destination or having been saved from shipwreck subsequently to the events which rendered necessery the sale or the pledging.

Mexican Code of commerce :

Art. 734. — Freight shall be due for goods sold by the Master to defray indispensable repairs to the hull, to the engines or the furniture, or for indispensable and urgent necessaries of the ship.

The price of such goods shall be fixed according to the result of the expedition, viz :

I. — If the ship safely reaches her destination, the Master shall account for their value at the price at which similar goods of the same quality are sold at that spot ;

II. — If the ship is lost, the Master shall take account for these goods at the price at which he himself sold them.

The same rule shall be observed for the payment of the freight; same shall be due : entirely if the ship reaches her destination, and in proportion to the distance effected if the ship is lost.

Argentine Code of commerce :

Art. 1086. — For goods which the Master was compelled to sell in the circumstances mentioned under article 947, the whole freight shall be due.

Freight for effects jettisoned for the common safety of the ship or the cargo, shall be wholly due as a common average.

Art. 946. (Repairs, purchase or nautical instruments).

Art. 947. — . . . .

. . . .

In such case, goods sold shall be paid to the charterers at the price which the other goods of the same quality shall produce at the port of discharge, at the time of the ship's arrival, or at the price fixed by surveyors when the sale shall have included all the goods of the same quality.

If the current market-price is lower than that at which the sale was effected, the excess shall be returned to the owners of the goods. If the ship cannot reach her destination, the accounts shall be settled on the basis of the sale-price.

Chilian Code of commerce :

Art. 1027. — Freight is due :

1° For the goods which the Master sells during the voyage in order to defray urgent necessaries of the ship.

Japanese code of commerce :

Art. 565. — The Master may conclude the following transactions, but only in order to pay repairs, or assistance in case of the ship being distressed, or salvage, and for the expenses necessary to continue the voyage :

1° a mortgage on the ship

2° a loan

3° to sell or to pledge the cargo partly or wholly, with the exception of the case provided for in article 562 (1)

In case of sale or pledging of the goods by the Master, the amount of damages is fixed according to the value which the cargo would have had at the port of discharge at the time of arrival there, under deduction of the expenses thus saved.

ART. 569. — If it be necessary for the completion of the voyage, the Master may, for that voyage, make use of the cargo. In such case, the provisions of article 565 apply by analogy.

ART. 614. — The shipowner is entitled to the whole freight :

1° If the Master has sold the cargo or pledged same according to the provisions of article 565, 1.

2° If he has made use of the cargo for the voyage, according the provisions of article 569.

3° If he has disposed of the goods according to the provisions of article 638.

ART. 638. — General average includes all indemnites and expenses resulting from measures taken by the Master on behalf of the ship or her cargo, to save them from a peril which threatened both.

The provisions relating to general average do not affect the rights of the parties interested to claim compensation from him who by his fault, caused the damage.

(1) Interest of the persons in the cargo.

§ 2. — DAMAGED CONDITION OF THE GOODS

French code of commerce :

ART. 309. — In no case, the charterer may claim a reduction on the freight.

ART. 310. — The charterer is not entitled to abandon for the freight, goods depreciated, or damaged through « vice propre » or by accident.

If however casks containing wine, oil, honey or other liquids, have leaked so that the are empty or nearly empty, such casks may be abandoned for the freight.

Draft of Mr Delarue :

ART. 300. — The whole freight is due :

1° . . . .

2° . . . .

3° If such goods are sold during the voyage on account of their damaged condition, owing to a « vice propre ».

Belgian law of 1879 :

ART. 76. — When the goods reach their destination without delay, the charterer may, on no account, claim a reduction on the rate of freight.

ART. 77. — The charterer is not entitled to abandon, for the freight, goods depreciated or damaged on account of « vice propre » or by accident.

If however casks containing wine, oil, honey or other liquids, have leaked so that they are empty or nearly empty, such casks may be abandoned for the freight.

German code of commerce :

ART. 616. — The freighter is not obliged to accept the goods in payment of the freight, even if they are damaged or spoiled.

If however casks having contained liquids, have become empty or nearly empty in the course of the voyage, such casks may be abandoned to him in payment of the freight or of his other claims.

This right subsists notwithstanding the agreement that the freighter shall not be liable for leakage, or notwithstanding the clause « free of leakage ». It ceases by the delivery of the casks to the consignee.

When a lump freight has been stipulated and if only some casks have become empty or nearly empty, the latter may be abandoned in payment of a proportional part of the freight and of the other claims of the freighter.

Art. 618. — Even in case of non delivery, freight is due for the goods whose loss is owing to their special condition, and namely to internal corruption, normal wasting-away or leakage, and for animals dying during the voyage.

The provisions as to general average shall determine in what proportion freight is due for goods sacrificed in case of general-average.

Italian Code of commerce :

Art. 581. — In no case may the charterer claim a reduction of the rate of freight.

The charterer is not entitled to abandon, for the freight, goods depreciated or damaged by « vice propre, » by accident or by a « force majeure ». If however casks containing wine, oil, or another liquid have leaked so that they are empty or nearly empty, such casks may be

abandoned for the freight corresponding to the quantity of stuff they contained.

Spanish Code of commerce :

Art. 663. — Goods which are damaged or diminished on account of « vice propre » or through inferior quality or bad condition of the packing, or by fortuitous accident, shall pay the whole freight stipulated in the contract of affreightment.

Art. 664. — The natural increase in weight or in bulk of goods loaded in the ship shall profit to their owner, and they shall pay the corresponding freight as fixed in the contract for said goods.

Art. 687. — The charterers and loaders shall not be entitled to abandon, in payment of the freight and other expenses, goods damaged by a « vice propre » or by a fortuitous accident.

There shall however be a right to abandonment when for a cargo, consisting of liquids, the casks have leaked so that there remains only one fourth of their contents.

Portuguese Code of commerce :

Art. 555. — The freight for goods sacrificed... &c.

§ 1. — Shall also be entirely due the freight for goods lost during the voyage in consequence of « vice propre », or sold exclusively for the benefit of the charterer, under deduction however of the expenses which in consequence of this event, the Master shall not have to pay.

Art. 562. — The charterer is not entitled to claim a reduction of the freight, nor to abandon the goods for the freight under pretence of delay in the arrival, depreciation or damage.

Unique paragraph. — In case casks containing liquids should have lost through leakage more then half their contents, they may be abandoned, with their contents, for the freight.

Code of commerce of the Netherlands :

ART. 497. — The charterer may in no case abandon the goods for the freight. However, if casks containing liquids have so leaked during the voyage that they become empty or nearly empty, such casks may be abandoned for the freight, damages and costs.

Scandinavian code of commerce :

ART. 151. — For goods which are not on board at the end of the voyage, no freight shall be due, unless their loss be the consequence of « vice propre » or of defective packing, or result from the fault of him who loaded them, or when the sale has been effected for account of their owner during the voyage.

If for such goods freight had been prepaid, it should be refunded. (1)

ART. 152. — If casks having contained liquids, have lost more than half their contents, the owner of such casks may abandon them instead of paying the freight ; but this right does no more exist after delivery to the consignee ; it shall also not exist if at the thime of the loading, the

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(1) The contract of affreight is continuous contract, it is a hiring *sui generis* ; freight can only be due for that which was carried up to its destination. The fortuitous accident must therefore be divided in such manner that in case of loss, the thing is lost for the charterer's account, but that the shipowner cannot claim any freight.

casks were in bad condition or defectively packed and if mention thereof has been made by the Master on the bill-of-lading, according to article 147. (1)

Russian code of commerce :

ART. 395. — When the ship commences to wear out, or when the cargo is damaged, either by a vioe propre, or on account of being badly packed or stowed without the necessary care, or when liquids commence fermenting, or turn sour, or leak, either by themselves or through bad condition of the casks, such damages are considered as particular average (2).

ART. 396. — For particular averages, every party bears his part of the damage, and that which is spared or saved, is returned to whom it may concern.

Code of commerce of Rumania :

ART. 591. — In no case the charterer may claim a reduction on the freight.

He may not abandon, against the freight, goods loaded which lost part of their value or were damaged by a « vice propre », by fortuitous accident or by a « force majeure ». However, if wine, oil or other liquids have leaked, the casks which contained same, if empty or nearly empty, may be abandoned in lieu of the freight which ought to be paid for same.

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(1) Liquids are considered as a special category of cargo; it is admitted that when a barrel loses more than half its contents, it may be wholly abandoned.

(2) Article 394 mentions as being particular averages such damages as are the result of bad weather or other fortuitous accidents.

Egyptian code of maritime commerce :

ART. 130. — If the lessor and the Master have, so far as they are concerned, complied with the contract of affreightment, the charterer or the loader may not claim a reduction on the freight agreed upon.

ART. 131. —The loader may not abandon, in stead of the freight, goods which became depreciated or damaged owing to a « vice propre » or through a fortuitous accident. If however casks containing wine, oil, honey or other liquids have leaked in such way that they have become empty or nearly empty, such casks may be abandoned instead of the freight.

Mexican Code of commerce :

ART. 738. — For goods damaged or depreciated by a « vice propre » or through bad condition of the packing, or by accident, the whole freight as agreed in the charter-party shall be due.

ART. 739. — The natural increase in weight or in bulk of the goods loaded in the ship, shall profit to the Master, and for such goods shall be due a corresponding freight, as fixed in the charter-party.

ART. 762. — The charterers and the loaders shall not be entitled to abandon goods damaged through a « vice propre » or by accident, in payment of the freight and other costs.

Abandonment may however be effected if for a cargo consisting of liquids, the casks containing same have leaked so as to retain only the fourth part of their contents.

Argentine code of commerce :

ART. 1085. — For goods which suffered deterioration or waste by circumstances for which the Master is not liable, the whole freight as per charter-party shall be due.

Goods which, owing to their own nature, may be subject to increase or diminution (in weight or bulk), shall thus increase or diminish for account of their owners. In either case, the freight is paid in accordance with the result of the counting, weighing or measuring, unless it be liquids whose casks have lost more than half their contents.

Chilian Code of commerce :

ART. 1027. — Freight is due :

1° . . . .

2° For goods which suffered damage or loss by accident, « vice propre » of the thing itself, inferior quality or bad condition of the packing ;

3° . . . .

4° For the increase in weight or bulk of the goods loaded.

ART. 1032. — The shipowner is not obliged to accept, instead of the freight, sound or damaged goods ; however the charterers may abandon to him for the freight casks of liquids having lost more than half of their contents.

ART. 1033. — Beyond the cases provided for by the law, the lessor shall not suffer any reduction on the rate of freight which he has earned in conformity with the charter-party.

Japanese Code of commerce :

ART. 605. — If freight has been fixed on the weight or the quantity of the goods, the amount of freight shall be determined according to the weight or the quantity of the goods at the time of their delivery.

THIRD QUESTION. — **Of the Freight in case the vessel is declared unseaworthy. — Is any freight due when the vessel is declared unseaworthy at the port of refuge or cannot complete the voyage, but when the cargo is reforwarded by another vessel and reaches its destination ? On what basis and in what proportion ?**

French Code of commerce :

ART. 238. — Every Master of a vessel who has contracted for a voyage, is bound to complete same, under penalty of all damages and indemnities towards the owners and the charterers.

ART. 296. — If the Master is compelled to have the ship repaired during the voyage, the charterer is bound to wait, or to pay the whole freight.

In case the ship cannot be repaired, the Master is bound to hire another.

If the Master has not been able to hire another ship, freight shall only be due in proportion of the part of the voyage effected.

ART. 297. — The Master has no more right to any freight and is liable for damages towards the charterer if the latter proves that when sailing out, the ship was unseaworthy.

This proof my be admitted notwithstanding and against certificates of survey which should have been delivered before sailing.

Draft of Mr. Delarue :

ART. 293. — If, in the course of the voyage, it becomes necessary, in consequence of an accident, to call at a port and repair the ship, the charterer must wait.

In case the repairs cannot be effected and the ship is declared unseaworthy, the Master shall have to take the necessary steps to find another ship to complete the voyage, for account of the owner.

ART. 300. — The whole freight is due :

1° If the goods are delivered in good condition at the port of destination. . . . .

ART. 301. — Freight is only due in proportion to the distance effected :

1° If in the case of article 293, the Master could not find another ship to complete the voyage.

ART. 302. — No freight is due :

1° If the ship has sailed without being in a perfect state of seaworthiness.

Belgian law of 1879 :

ART. 94. — If the Master is compelled, during the voyage, to have the ship repaired, the charterer must wait, or pay the whole freight.

If the ship cannot be repaired, the Master must hire another.

If the Master cannot hire another ship, freight shall be settled as provided in article 97.

ART. 95. — The Master has no more right to any freight, and he is liable for damages towards the charterer, if the latter proves that, when sailing out, the ship was unseaworthy.

This proof is admissible notwithstanding the certificates of visit at the port from whence the ship sailed. — (Civil code, 1142.)

ART. 97. — No freight is due for the goods lost by shipwreck or stranding, plundered by pirates or taken by the enemies.

The Master is bound to refund the freight which was paid in advance, unless otherwise agreed.

No freight is due for goods which, after a ship being wrecked or declared unseaworthy, shall not reach their destination.

If the goods reach their destination at a lower freight than that which had been agreed to with the Master of the ship wrecked or declared unseaworthy, the difference between these two rates of freight must be paid to the Master of the latter vessel. But nothing is due to him if the new freight is equal to that agreed to with him ; and if the new freight is higher, the difference is to be paid by the charterer.

German Code of commerce :

ART. 632. — The cancelment of the charter-party does not modify in any way the obligation for the Master, in case of loss of the ship and in the absence of the parties interested, to take the measures necessary to protect the cargo's interests (art. 535 to 537). Consequently, it is the right and the duty of the Master, and in case of urgent need, even without having previously asked instructions, either to have the cargo reforwarded for account of the parties interested, by another vessel, to the place of destination, or to deposit these goods. If he causes them to be carried further, or if he puts same in store, he is entitled to sell part of them in order to procure the means for realising such measures and to provide for the preservation of the remainder ; if he causes the goods to be reforwarded, he is entitled to contract a bottomry bond on the whole or part of the cargo.

However, the Master is not obliged to part with the cargo or to give it over to the Master of another ship for further transport, before having encashed the distance-

freight as well as the other claims of the lessor enumerated in article 614, and the sums due by the cargo for general average-contribution, salvage, assistance and bottomry bonds. — or before having received bail for such amounts.

The shipowner is liable on the ship, so far as anything has been saved thereof, and on the freight, for the execution of the obligations imposed upon the Master by the first paragraph of this article (1).

Italian Code of commerce :

ART. 514. — Every Master of a ship, who has contracted for a voyage, is bound to complete same, under penalty of damages and indemnities towards the owners and the charterers.

In case of the ship being declared unseaworthy, the Master must take the necessary steps to find another ship to carry further the goods to their destination.

ART. 570. — If the Master is compelled, during the voyage to have the ship repaired, in consequence of an accident or a « force majeure », the charterer must wait or pay the whole freight.

In case the ship cannot be repaired, freight is due in proportion to the distance effected.

If the Master has chartered another ship to carry the goods loaded to their destination, the new charter shall be considered as being contracted for account of the charterer.

(1) *Note of the translator* : In case of absence of the parties interested the liability of the Master is at an end as soon as the cargo has been delivered to any person qualified to receive it. The Master is entitled to an indemnity for the expenses, the time lost and the pains taken by him at the place of discharge. — High Court of commerce of the Empire, XV, 23.

ART. 571. — The Master loses his claim for freight and is liable for damages towards the charterer if the latter proves that when sailing out, the ship was unseaworthy.

This proof is admissible notwithstanding and against the certificates of survey which should have been delivered before sailing.

Spanish Code of commerce :

ART. 657. — If during the voyage, the ship becomes unable to sail, the Master shall have to charter, at his expenses, another ship in good condition to receive the cargo and carry it to destination. To this effect, he shall have to look for a ship, not only at the port of call, but also in the neighbouring ports within a radius of 150 kilometers.

If the Master, through negligence or *dolus* (fraud) does not provide for a ship to carry the cargo at destination, the charterers, — after having previously summoned the Master to procure another ship within a delay which shall not be subject to extension, — shall be at liberty to charter themselves, asking however the judicial authorities to approve the charter concluded by them by a decision rendered in the summary form of procedure (1).

The same authorities shall, by compulsion, oblige the Master to fulfil, for his own account and under his responsibility, the new charter thus concluded by the charterers.

If, notwithstanding his efforts, the Master cannot charter a ship, he shall deposit the cargo at the disposal of the charterers and he shall advise these latter thereof by first opportunity ; and in such case, the freight shall be settled in proportion to the distance sailed by the ship, without any indemnity being due.

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(1) *Note of the translator* : The rules of the summary procedure referred to by this article, have not yet been fixed.

ART. 676. — The Master shall lose his freight and shall be liable towards the charterers always when these latter prove — even against the certificate of survey when the ship 'as been visited at the port from whence it sailed, — that she was not in a fit state to navigate at the time she took in the cargo.

This is one of the questions on which will bear the draft of reform of the law of *Enjuiciamento civil*, which has been rendered necessary by the promulgation of the new Civil and Commercial codes.

Portuguese Code of commerce :

ART. 513. — The Master may not sell the ship without a special authority of the shipowner, the single exception to this rule being the case of unseaworthiness of the vessel.

§ 1st. — The unseaworthiness shall be declared and the sale ordered by the President of the Tribunal of commerce, or by the magistrate appointed by him and if the fact happens in a foreign country, by the Portuguese consular agent, or failing him, by the judicial authorities of that country.

§ 2. — If the ship is declared unseaworthy, it falls on the Master to procure and to charter another ship in order to carry the cargo to the place of its destination.

§ 3. — The obligation mentioned in the preceding paragraph ceases if a freight superior to that which the ship allows, is required from him, unless the parties interested in the cargo agree to an increase of the rate of freight, which, in such case, remains for their account.

ART. 557. — No freight is due by the charterer if he proves that the ship was unseaworthy at the time of sailing out for the voyage for which she was chartered.

Code of commerce of the Netherlands :

ART. 478. — If the Master is compelled to have the ship repaired in the course of the voyage, the affreighter or the charterer is bound to wait until the ship is repaired, or to withdraw his merchandise, paying in such case the whole freight and the general average, this without prejudice to the provisions of article 511.

If the ship is chartered per month, he owes no freight during the time of the repairs, and he shall not have to pay an increased rate of freight if the ship has been chartered for the voyage.

If the ship cannot be repaired, the Master shall be bound, at his own expenses and without being entitled to claim any additional freight, to hire another vessel or several other vessels, in order to carry further the goods to the place of their destination.

If the Master could not hire one or more other vessels on the spot, or at a neighbouring place, freight shall only be due in proportion to that part of the voyage which is already effected.

In this latter case, the reforwarding of the goods shall be left to the care of each charterer, the Master being however obliged, not only to notify to them the state of things, but also to take in the meantime the measures necessary to the conservation of the cargo.

All this, unless the parties have agreed otherwise.

ART. 479. — If the charterers prove that, when the ship sailed out, she was in state of unseaworthiness, they shall have to pay no freight and they shall be entitled to damages or indemnities.

This proof is admissible notwithstanding and against the certificates of survey delivered before the departure of the ship.

Scandinavian Code of commerce :

ART. 57. — The Master . . . .

If the ship is wrecked or declared unseaworthy, and if the charterer has no representative at the spot and if his instructions cannot be waited for, the Master must reforward his goods by another ship, to the place of destination, at the lowest freight possible, or cause them to be discharged and sold, according to circumstances.

The sale of the cargo must take place, as far as possible, by public auction.

ART. 160. — When the ship is lost in the course of the voyage, or when she cannot be repaired, the charter-party shall be cancelled *ex officio*, without prejudice to the obligation of the Master to take the measures mentioned in article 57, for the charterer's account.

Freight shall only be due in proportion of the distance effected on the whole voyage as stipulated, taking however into account the time necessary for the voyage, the special difficulties and the costs, proportionally to that part of the voyage which remains unaccomplished. In case parties do not agree, arbitrators shall fix the amount of freight to be paid.

It shall be permissible to abandon the remainder of the goods instead of paying the freight.

ART. 142. — . . . .

. . . .

If the ship was in a defective condition since the beginning of the voyage, and if the damages are the consequences thereof, but if with the utmost diligence, it was nevertheless impossible to discover these defects, no indemnity shall be due by the lessor (shipowner).

Russian Code of commerce :

ART. 345. — When the ship suffers damage in the course of the voyage, and when the Master is thereby obliged to call at a town or at a port, if the Master thinks that the repairs to be effected.cannot be completed within a short delay, and if he knows on the other hand that the delay thus incurred in the delivery of the cargo cannot fail to cause a considerable loss to a charterer, the Master may hire another ship to carry the said goods to the place of destination. The amount of freight must then be included into general-average adjustment.

ART. 418. — If, in the course of the voyage, the ship suffers such damages as would render it impossible to continue the voyage up to the place of destination, so that the Master is compelled to call at a port on his route, in order to effect the necessary repairs, and if he foresees that the ship shall not be ready to sail again to arrive within the delay fixed at the place of destination, and that such delay would involve losses for the owners of the goods or of the cargo — in such case, the Master has the right to charter another ship ; if he finds one at a suitable price he pays the two thirds of the freight, and the remaining third is paid by the owner of the merchandise. The Master who thus took the engagement to carry the merchandise to the port of destination, receives half the primage due to the Master ; he remits the other half to the Master who entrusted to him the transport of the merchandise. The obligations of the Master who was compelled to call at a port, either by necessity or in consequence of average suffered by the ship, as well as the obligations of the Custom-authorities in such case, are ruled by the Custom-laws.

Code of commerce of Rumania :

Art. 524.— The Master who has contracted for a voyage, is bound to complete same, under penalty of being liable for all damages towards the owners and the charterers.

If the ship is declared unseaworthy, the Master is bound to take the necessary steps to find another ship with which the goods loaded may be carried to their place of destination.

Art. 580. — If, in consequence of a fortuitous accident or a « force majeure », the Master is compelled to have the ship repaired during the voyage, the charterer is obliged to wait or to pay the whole freight.

If the ship cannot be repaired, freight is due in proportion to the distance effected.

If, in order to carry the goods loaded to their place of destination, the Master has chartered another vessel, this new charter is to be considered as having been concluded for account of the charterer.

Art. 581. — The Master loses his right to the freight and is liable for damages towards the charterer, if the latter proves that the ship was not in state of seaworthiness at the time she sailed out.

This proof is admissible even against certificates of survey.

Egyptian Code of maritime commerce :

Art. 115. — (Same text as article 478 of the Code of commerce of the Netherlands).

Art. 116. — (Same text as article 479 of the Code of the Netherlands).

Mexican Code of commerce :

Art. 732. — (Same text as article 657 of the Spanish code of commerce).

ART. 751. — (Same text as article 657 of the Spanish Code of commerce).

Argentine Code of commerce :

ART. 1075. — If the ship connot be repaired, the Master is bound, at his own expenses and without being entitled to claim any additional freight, to charter one or more other ships in order to carry the goods to their destination.

If the Master cannot charter other ships, the cargo shall be deposited for the charterers' account, at the port of call, and the freight of the ship thus disabled shall be settled according to the distance effected.

In the latter case, the reforwarding of the goods shall rest with the charterers, the Master being however obliged to notify to them the position in which he is, and to take in the meantime the necessary measures for keeping the cargo in good condition.

ART. 1076. — If the charterers prove that the disabled ship was not in a fit state to navigate when it received the cargo, they shall not be obliged to pay the freight, and the lessor (shipowner) shall be liable towards them for all damages and losses.

This proof shall be admissible notwithstanding the certificate of survey attesting the fitness of the ship to undertake the voyage.

Chilian Code of commerce :

ART. 1019. — If the ship cannot be properly repaired, the Master shall have to charter another vessel for his own account, and transport the goods by this vessel, without being entitled to any additional freight.

In such case, he shall be bound to accompany the cargo until he has effected its delivery at destination.

If he cannot find another ship in the ports sitated within a radius of 150 kilometers, the Master shall deposit the cargo for the charterers' account, advising them of this storing, and he shall claim the freight in proportion to the distance effected, without any other indemnity.

ART. 1020. — In every case where the Master, through malice or negligence, does not provide another ship for reforwarding the cargo, the charterers shall be allowed to take the necessary steps and to hire such ship for account of the lessor (shipowner) and at his expenses, after having previously addressed to the Master two judicial summons during the last fortnight of the delay mentiond in article 1018.

The chartering concluded by the loaders shall be have effect notwithstanding the opposition of the Master.

ART. 1021. — If they prove that the ship was not in a state of seaworthiness when she received the cargo, the charterers shall not be obliged to pay any freight and they shall have the right to claim from the lessor (shipowner) the damages and losses they have suffered thereby.

This proof shall be admissible notwithstanding the certificate of survey mentioned under nr. 3 of article 899.

Code of commerce of Japan :

ART. 611. — When the voyage or the undertaking of carriage is contrary to a text of law or to an ordinance, or if, in consequence of a force majeure, the object of the voyage cannot be arrived at, each of the contracting parties may cancel the contract.

If such cause should intervene after the voyage was commenced, and if thereby the contract is cancelled, the charterer is bound to pay freight in proportion to the distance effected.

FOURTH QUESTION. — **Question of half-freight and dead-freight.— In the case where the charterer cancels the voyage before loading, or loads only part of the engaged cargo, — shall the indemnity due (half-freight or dead-freight) be fixed legislatively, or should the question be referred to the common law as to damages?**

French Code of commerce:

ART. 228.—The charterer who did not load the quantity of goods stipulated in the charter-party, is bound to pay freight for the full cargo for which he has contracted.

If he loads more, he pays freight for the quantity in excess, on the basis of the rate fixed in the charter-party.

If however the charterer, before having loaded any goods, cancels the voyage before the departure of the ship, he shall pay, as an indemnity, to the Master, half of the freight agreed to by the charter-party for the total quantity to be loaded.

If the ship has received part of her cargo and sails unloaded, the whole freight shall be due to the Master.

ART. 291. — If the ship is loaded on the berth, either per quintal (hundredweight) per ton or by the job, the charterer may withdraw his goods, before the departure of the ship, against payment of the half-freight.

He shall bear the costs of loading, as well as the expenses for discharging and reloading the other goods which should have to be removed, and the demurrage

ART. 294. — . . . .

. . . .

If a ship is chartered for a outward and homeward voyage, and if the ship sails home without cargo, or with an incomplete cargo, the whole freight is due to the Master, together with the interests of the delay.

Draft of Mr. Delarue :

ART. 287. — When the agreement is signed, and if the contract is cancelled by the will or the act of either of the contracting parties, the amount agreed upon for the carriage, which is called freight, is due as an indemnity, unless otherwise agreed.

ART. 296. — He who charters a ship entirely or partly, must provide a full and complete cargo for filling the holds affected to the carriage of goods, or that part of the deck on which it is allowed to load, according to the rules formerly established.

Freight shall be due for all goods which ought to have been loaded.

ART. 298. — The charterer has the right to withdraw his goods at the departure, or at every port of call or refuge-harbour, provided he pays the costs of discharge, the contributions to general average and the freight, under the conditions determined hereafter (1).

Belgian law of 1879 :

ART. 75. — The charterer has two principal obligations to fulfil ; 1° to effect the loading for which he contracted ; 2° to pay the freight agreed upon.

When he has not loaded the quantity of goods stated in

(1) V. *Chapter II : Of the Freight, its accessories and its settlement.* — No allusion is made to the withdrawing of the goods *at the departure.* So the whole freight would be due. (art. 287 of Mr. Delarue's draft).

the charter-party, he is nevertheless bound to pay the whole freight and for the whole quantity for which he has contracted.

He has no more the right to cancel the contract as soon as the ship has received part of her cargo ; if in such case, the ship sails unloaded, the whole freight shall be due to the Master, unless the ship be loaded on the berth.

ART. 87. — If the ship is loaded on the berth, either per quintal, per ton or by the job, the charterer may withdraw his merchandise before the departure of the vessel, against payment of the half freight.

He shall pay the costs of loading, as well as the costs of discharging and reloading of the other goods which it would be necessary to remove, together with the costs of delay.

ART. 82. — If the ship is delayed (stopped) at her departure, during her voyage or at the place of her discharge, through the act of the charterer, the costs of the delay are for charterer's account.

If the ship, having been chartered for an outward and homeward voyage, sails homeward without cargo, or with an incomplete cargo, the whole freight shall be due to the Master, and also the interest of the delay.

England :

In Great-Britain, in case the contract if cancelled by the will of the charterer, before the loading, there is no lump indemnity, such as the half-freight, fixed by the law. In such case, the shipowner has a claim for damages. (Lyon-Caen and Renault, t. V, n° 804, note 2.)

German Code of commerce :

Art. 578. — At the request of the charterer, the lessor (shipowner) must start on his voyage, even without having received the whole of the cargo contracted for. But in such case, not only the whole freight is due to him, and eventually, an indemnity for demurrage ; but he may also require special securities to be given, if, on account of the insufficiency of the cargo, he has no guarantee for the payment of the whole freight. Finally, the charterer shall refund to him the supplementary costs which might be occasioned to him by the fact of the ship not being loaded.

Art. 579. — If the charterer has not completely effected the loading before the expiration of the delay during which the lessor is bound to wait for it, this latter has the right, — unless the charterer desist from the agreement — to commence the voyage and to enforce his claims enumerated in the preceding article.

Art. 580. — Whether it concerns one single passsage, or several combined voyages — as long as the voyage has not commenced, the charterer may desist from the contract, provided he pays, as « false » freight, one half of the freight stipulated.

In the sense of the present provision, the voyage shall be considered as having commenced :

1° When the charterer shall have given authorisation to the ship to sail ;

2° When the loading shall already have been effected wholly or partly and when the lay-days shall be at an end.

Art. 581. – If, after delivery of the cargo, the charterer makes use of the right determined by the preceding article. he shall also bear the costs of loading and discharging,

and shall be further liable for the indemnity for demurrage (art. 572) unless the discharging be effected during the lay-days. The discharging must be effected with all possible speed.

The lessor (shipowner) is obliged to accomodate himself with the delay caused by the discharge, even if thereby the delay of lay-days is exceeded; but when this delay is exceeded, he is entitled to the indemnity for demurrage and to compensation for the loss which he would have suffered by the fact that the lay-days are expired, if this loss be higher than the indemnity for demurrage.

ART. 582. — When the voyage has commenced, in the sense of article 580, the charterer may not cancel the contract and require discharge of his goods, unless he pays the whole freight and all such amounts to which the lessor (shipowner) is entitled according to the terms of article 614 and that he pays or gives security for the claims accruing to the latter according to article 614.

In case of discharge, the charterer must pay an indemnity not only for the additional expenses caused by this operation but also for the damage caused to the lessor (shipowner) by the delay which results therefrom.

ART. 583. — The charterer is only liable for two thirds of the whole freight, as dead-freight, and not for the entire freight, when the ship as been chartered for a homeward voyage to be effected immediately, or if, for executing the contract and taking cargo, the ship must come from another port and if, in both these cases the cancelment of the agreement has been notified before the homeward voyage or the voyage from the port of discharge have commenced, in the sense of article 580.

ART. 584. — In the case where it concerns any other combinated voyages, the lessor (shipowner) shall be entitled to the whole freight as dead-freight, if the contract

be cancelled by the charterer before the last part of the voyage has commenced, in the sense of article 580 ; a corresponding portion shall however be deducted if circumstances permit to prove that through the cancelment, expenses were saved which otherwise the shipowner ought to have paid, and that he had the opportunity to procure freight from another side.

The deduction may however in no case exceed one half of the freight.

Art. 585. — If the charterer has provided no cargo at the time when the lay-days elapse, the lessor (shipowner) is no longer bound to observe the conditions of the contract and may enforce against the charterer the same claims which he would have had in case of cancelment.

Art. 586. — Freight which the freighter may obtain by loading other goods, is not to be included in the calculation of the dead-freight. No derogation is made to the provision of the first paragraph of article 584.

The action of the freighter to obtain a dead-freight is not influenced by the fact that he effects the voyages as determined by the contract

Dead-freight does not prevent the shipowner to bring actions in order to obtain the indemnity for demurrage and other claims to which he is entitled according to article 614.

Art. 587. — If the affreightment relates to a proportional a part of the ship or to a determined space, articles 567 to 586 shall apply, under the following reserves :

1° In the case where, according to said articles, the lessor should have to be satisfied with part of the freight he shall receive the whole freight as dead-freight unless the charterers cancel the contract and supply no cargo at all.

However, there shall be deducted from the whole

freight such freight as relating to goods which the lessor shall have been able to load instead of such cargo as was not supplied to him.

2° In the case of articles 581 and 582, the charterer is no more entitled to request the discharge — when the consequence thereof would be to delay the voyage — or a transshipment, unless all the charterers agree to it. Further, the charterer shall be bound not only to pay the costs of discharge, but also to refund the loss which would result from the discharge.

If all charterers make use of the right of cancelment, only the provisions of articles 581 and 582 will apply.

ART. 588. — If the charter is concluded for loading on the berth, the charterer must effect the loading without any delay, at the request of the Master.

If he delays the loading, the lessor is not obliged to wait until the goods be supplied, and he has the right, if the ship sails without the goods being supplied, to claim the whole freight. However, deduction shall be made of the freight relating to the goods which the freighter would have loaded to replace such merchandise as was not supplied to him.

The lessor who intends to claim the freight from the charterers who are beyond time, is obliged to give them notice thereof, before his departure, failing which he shall lose his right. The provisions of article 571 apply to this notification. (1)

ART. 589. — When the loading is effected, the charterer can no more — even if he pays the whole freight as well

(1) *Note of the translator* : If, for ships chartered to load on the berth, a certain delay has been agreed upon for the loading and the discharging, calculated in days, and if any doubt should arise as to the construction of the agreement, such delay shall be reckoned as stated in paragraph 2 of article 567. — T. S. C. XII, 43.

as all amounts due to the lessor according to article 614, and all which is allowed to him by article 615, or by guaranteeing such payments by securities — cancel the contract and require the discharge of the goods ; the provisions nr 2 of the first paragraph of articlc 587 being only reserved.

The provision of paragraph 3 of article 582 applies in that case.

Art. 590. — When a ship is chartered to load on the berth, and if no date has been fixed for her departure, it shall be for the Judge decide, at the requiest of the charterer, and according to the special circumstances of the case, the delay beyond which it shall not be permissible to delay the voyage.

Italian Code of commerce :

Art. 564. — The charterer who give notice that he cancels the voyage before the departure of the ship, and without having loaded any goods, shall have to pay half the freight.

When he has not cancelled the voyage, or when he loads a smaller quantity thant that agreed upon, he shall have to pay the whole freight.

If he loads more he shall have to pay freigt on the excess on the basis of the rate of the charter-party.

Art. 565. — If the object of the contract of affreightement was the carriage of some specified effects, the loader may withdraw the goods loaded, before the departure of the ship, against payment of half the freight.

In such case, he shall pay the costs of loading, of discharge and of reloading of the other goods which are to be transported, as well as the costs of the delay.

Art. 568. — . . . .
. . . .

If a ship being chartered for an outward and homeward

voyage, effects her voyage home without cargo or with an incomplete cargo, the whole freight is due to the Master, as well as the interest for delay.

Spanish Code of commerce :

ART. 680. — The charterer who shall not fully complete the cargo which he bound himself to embark, shall pay the freight for the part which he failed to load, unless the Master has found another cargo to complete the loading of the ship ; in the latter case, the first charterer shall only have to pay the differences, if any.

ART. 685. — For charterers of ships to load on the berth (*à carga general*) any of the loaders may discharge before the beginning of the voyage, against payment of half the freight, the costs made for the stowage and the removal, as well as any other damages caused thereby to the other loaders.

ART. 688. — The contract of affreightment may be cancelled at the request of the charterer :

1° If, before loading the ship, the charterer gives up the affreightment and pays half of the freight agreed.

Portuguese code of commerce :

ART. 552. — When the ship has been chartered for her total capacity and if the charterer does not load her completely, the Master may not take in other merchandise without the knowledge of the charterer.

Unique §. The freight of goods wich complete the cargo comes to the charterer.

ART. 553. — The charterer who gives up his contract before commencing to load the cargo, shall pay half of the freight.

§ *1st*. If he loads a smaller quantity than the quantity agreed upon, he shall pay the whole freight.

§ 2nd. If the quantity loaded by him exceeds the total agreed upon, he must pay freight for the excess.

ART. 554. — The charterer may withdraw from the ship effects he loaded thereon, provided he pays the whole freight, as well as the expenses for putting on board, stowing and discharging such goods, and if he returns the bills-of lading.

Code of commerce of the Netherlands :

ART. 464. — When the charterer has loaded no goods within the delay fixed by the charter-party or in the law, the lessor (shipowner) has the option :

Either to claim the indemnity provided in the charter for the delay, or an indemnity to be fixed by experts, in case no agreement exists ;

Or to cancel the contract of affreightment and to claim from the charterer half of the freight or rate agreed, with average and primage ;

Or to proceed on the voyage without cargo, after thrice twenty-four hours have elapsed since a summons, and to claim, at the end of the voyage, from the charterer, the whole freight and the additional lay days, if any.

ART. 465. — If the charterer has loaded only part of the cargo within the delay, the lessor has the option :

Either to claim the indemnities mentioned in the foregoing article ;

Or to proceed on the voyage with such part of cargo, on the basis of the last paragraph of said article.

ART. 466. — In the case where the ship, after having proceeded on her voyage without cargo or with only part of cargo, she meets in the course of that voyage, with some damage which would have been apportioned as a general-average if the ship had taken her full cargo, the lessor

(shipowner) shall be entitled to claim from the charterer a contribution for two thirds of the quantity which he did not load.

ART 467. — If the charterer, not having loaded any goods, gives up the contract before the additional lay days begin to run, he shall be obliged to pay to the lessor or to the Master half of the freight agreed in the charter-party.

ART. 468. — When the lessor has the right to proceed on the voyage without cargo, or with a part of the cargo, he may, in order to guarantee the freight and the contribution to general-average, cause the Master to load other merchandise, without the charterer's consent.

In such case, the charterer is entitled to profit by that freight and to be exonerated from contribution to general average for such share as is paid by those other goods.

ART. 469. — If the charterer loads more than the quantity stipulated in the charter-party, he pays freight on the quantity in excess, on the basis of the rate determined by the charter-party.

ART. 473. — When a vessel is chartered to load on the berth, and when no time has been fixed for her departure, each of the charters is allowed to withdraw his goods without paying the freight, but against restitution of the bills-of-lading signed by the Master, giving bail for the bills-of-lading already sent off, and against payment of the cost of loading and discharge.

However, if the ship was already loaded more than half, the Master shall have the obligation, eight days after the summons, to go under sail at the first wind, at the first tide or favorable opportunity, if the majority of the charterers require it, without any charterer being entitled to withdraw his merchandise.

Scandinavian Code of maritime commerce :

ART. 126. — Provided he pays half the freight and an indemnity for demurrage and the other delays, the charterer of a ship may cancel the charter-party ; in such case, he must notify the cancelment to the Master before the voyage in question has commenced. In case of a charter for several voyages, he shall pay half the freight for the first voyage, and one fourth of the freight for each of the other voyages ; but if the agreement only relates to a voyage to a port named with return voyage by direct route, the half-freight shall also be due for the voyage back.

Until he has received the quantity of goods contracted for, the Master is not obliged to proceed on the voyage, unless he be paid for the price of the whole and unless he receive an indemnity for all costs which may result from the delay in completing the cargo, or unless proper bail be given to him for such claims. In the case where the charterer fails to pay or to give such securities before the delay for loading be expired, he shall have to pay the freight and the above named indemnity, and the contract shall be cancelled against him.

There shall be a ground to apply article 141 when the bill-of-lading relating to the goods loaded, has already been sent away.

ART. 127. — When, in the case provided for in article 126, the goods taken on board shall have been discharged owing to the cancelment of the contract, an indemnity shall be due to the lessor (shipowner) for the expenses of loading and discharging of the goods and for the expenses caused by the delay, according to articles 120 and 122.

ART. 128. — The whole freight shall be due, together with an indemnity for the demurrage and any longer delays, by the charterer of the whole ship who shall require the

agreement to be cancelled after the beginning of the voage.

However the sum to be paid shall be only three fourths of the freight if the charter-party has been concluded for a cargo to be taken at another port and if the cancelment of the affreightment is effected before the ship leaves the loading port; or if it is the legal consequence of the fact that the charterer delays the supply of the goods or does not act according to the provisions of article 126, if the said goods have not been fully supplied.

When several voyages are stipulated in by the bill-of-lading, the whole freight is due for the voyage commenced, half the freight for the following voyage and one fourth of the freight for the subsequent voyages. If the charter refers to a voyage to a fixed port and the voyage back from this port by the direct route, and if the contract has been cancelled before the beginning of the homeward voyage, then for the two voyages three fourths of the freight shall be due.

For the discharge of the goods, the charterer is not entitled to require that during the voyage the ship should call at a determined port. If the ship call at a port where the unloading had to take place but, for another reason, the charterer shall be entitled to receive the goods at that port, provided however he pays the costs occurring through this discharge and the losses and damages caused thereby to the lessor (shipowner) — these amounts to be fixed by arbitration.

Article 141 shall be applicable to the case where the bill-of-lading of the goods taken on board should already have been sent away.

Art. 129. — When the ship has been chartered by several parties, each of them for a different lot of goods, articles 126, 127 and 128 shall be applied if all those parties require from the freighter that the charter be cancelled. If they fail however to agree, he who would avail himself of the option of cancelment for his own port of the cargo,

shall have to pay the whole freight, the demurrage-days and the other delays, if the responsibility for same rests with the charterer, as well as such costs as the freighter shall have paid in consequence of that cancelment. The charterer shall be at liberty to discharge the goods if he can do so without causing thereby to the other charterers any loss owing to the delay of the voyage; however he shall be at liberty, in virtue of article 128, to claim an indemnity for costs, losses and damages.

ART. 130. — The charterer is entitled to a reduction on the freight for the costs spared of which the lessor has the benefit, in the case where the charterer must pay the whole freight for goods which the ship does not carry to the place of destination. From the amount thus due by the first charterer shall be deducted half of the freight paid for the other goods which the Master should have loaded instead.

ART. 141. — If the contract is cancelled before the voyage have commenced, or is broken, the Master shall not be obliged to deliver the goods before having been put into possession of all the copies of the bill-of-lading, the documents endorsed not excluded; there will be no necessity for this rule if the copies of the bill-of-lading are numbered; in such case, delivery can be made to the bearer of the bill-of-lading marked « number first » even without the other copies being remitted.

Russian code of commerce:

ART. 338. — The forfeit stipulated for the case where the agreement is cancelled by the charterer must not exceed the total amount of the freight and the profit of the Master on the cargo as they are stipulated in the contract.

ART. 331. — The forfeit payable by the Master for non execution of the liabilities contracted for, must not exceed

one half of the amount of freight and one half of the profit on the cargo.

ART. 332. — The forfeit to be paid by a party having only an interest on the ship or on the goods or the cargo, must not exceed one half of his interest.

ART. 354. — If the charterer does not supply for loading in the ship all the goods stipulated in the contract, so that there is a void space in the ship, said charterer shall remain liable for such freight as is represented by this void space.

ART. 355. — If, in order to fill up his ship, the Master has contracted with several parties towards which he bound himself to embark their goods and to sail at a fixed day, he is obliged to sail out at the time thus determined; if it should happen that one of the charterers did not supply the goods at the time agreed upon, or more generally, if he does supply same too late, after the departure of the ship, he shall have to pay the whole freight and the wages of the loading people, as if those goods had been embarked.

ART. 356.— If the charterer contracted to embark on the ship a given merchandise and if he has not such merchandise at the time agreed upon he has the right to transfer his contract to any other person, or to replace the merchandise contracted for by other goods, provided these latter goods be not of such nature as to damage the other merchandise on board the ship.

Rumanian code of commerce :

ART. 574. — The charterer who, before the departure of the ship and without having loaded any goods, declares to cancel the voyage, shall have to pay one half of the freight.

If he has not declared to cancel the voyage, or if he loades a quantity inferior to that contracted for, he has to pay the whole freight.

If he loades a larger quantity, he shall pay for the quantity in excess a freight in proportion to the rate agreed upon.

ART. 575. — If the charter-party refers to the carriage of things determined, the charterer may, before the departure of the vessel, withdraw the goods loaded against payment of half the freight.

In such case, the costs of loading and discharging and the expenses for reloading other goods which must be removed, as well as the costs of the delay, are to be paid by the charterer.

ART. 578. — . . . .
. . . .

If having been chartered for an outward and homeward voyage, the ships effects the home-voyage without cargo, or with an incomplete cargo, the whole freight shall be due, without prejudice as to the indemnity which might be due for the delay.

Egyptian code of maritime commerce :

ART. 106.— If the charterer has loaded no goods within the delay fixed by the charter-party or by the law, the lessor . . . .

In the same case, the charterer who has loaded no goods within the said delay shall be at liberty, before the beginning of the additional lay-days, to cancel the contract, against payment to the lessor or shipowner of one half of the freight and of the other advantages stipulated in the charter-party.

ART. 107.—If the charterer loaded, within the delay fixed, only part of the goods stipulated in the charter-party, the lessor has still the option, either to claim the indemnities mentioned in the last paragraph of the preceding article, or to undertake the voyage with the half of the cargo already loaded. In the latter case, the whole freight shall be due to the lessor.

ART. 108. — If the charterer loads more goods than was agreed, he shall pay freight, for the quantity in excess, at the rate stipulated in the charter-party.

ART. 111. — In the case of a ship loading on the berth, if no delay is fixed for the loading, each of the charterers may withdraw his goods, provided he returns the bills-of-lading signed by the Master, or gives bail for the copies of the bill-of-lading as are already sent off, and provided he pays half of the freight agreed, together with the costs of loading and discharging, as well as the expenses for reloading such goods as would have to be removed.

However if the ship has already three fourths of her cargo, the Master is bound, if the majority of the charterers so require, to sail with the first favorable wind, eight days after the summons, without any of the charterers having the right to withdraw their goods.

ART. 113. — . . . .
. . . .

If, having been chartered for an outward and a homeward voyage, the ship effects the home-voyage without cargo, or with an incomplete cargo, the whole freight is due to the Master together with the interest for delay in the event the ship has been delayed.

Mexican code of commerce :

ART. 755, 760, 763. — (Text corresponding to articles 680, 685 and 688 of the Spanish code of commerce.)

Argentine code of commerce :

ART. 1049. — After the delay fixed for the loading and for the stipulated lay-days and demurrage-days has elapsed, or, failing an agreement as to this, at the expiration of the customary lay-days and demurrage-days, if the charterer has loaded no goods at all, the freighter has the option — if no indemnity for delay has been specially de-

termined in the charter-party: either to cancel the contract, claiming one half of the freight agreed upon and of the primage, as well as the lay-days and demurrage; or to undertake the voyage without cargo, and, when it is completed, claim the whole of the freight and the primage, together, with all further amounts which might be due for averages, lay-days and demurrage.

ART. 1050. — If at the time stipulated, the charterer only loads part of the cargo, the lessor (shipowner) has the option, at the end of the lay days and demurrage-time, — if no indemnity has been provided by the charter-party — either to cause the goods to be discharged at the charterer's expenses, and claim from the latter half of the freight; or to sail on the voyage with that part of the cargo as is on board and claim the whole freight, at the port of destination, together with the other expenses mentioned in the preceding article.

ART. 1051. — If the ship, having thus, in the cases provided for in the two preceding articles, left port without cargo, or with a part of the cargo only, should happen to suffer during her voyage, a damage which would be considered as a general average had the cargo been complete, the lessor (shipowner) will in such case be entitled to claim from the charterer a contribution for two thirds of the goods which were not loaded.

ART. 1052. — If the charterer gives up the contract before the demurrage have begun running, he shall only have to pay (unless otherwise agreed) one half of the freight and of the primage. If the charter was concluded for an outward and homeward voyage, he shall only pay half of the freight for the outward voyage.

For ships chartered for loading on the berth, any charterer, or his assign, may discharge the effects loaded against payment of the half-freight, the costs of unloading

and reloading and any other damage which he might have caused to the other charterers.

These latter, or one of them, shall have the right to oppose the discharge if they take for their account the effects which the owner of such goods intended to discharge and if they pay their value at the price of the invoice of consignation.

ART. 1053. — In the case where he is entitled to undertake the voyage without cargo, or with part of the cargo only, the lessor (shipowner) may, in order to have a security for the freight and other indemnities to which he can be entitled, accept cargo from other parties, without the charterer's consent, even against a lower rate of freight, the difference being for the charterer's account.

In such case, the charterer profits by the new freight, and in case of a general average, he is not responsible for the contribution relating to the merchandise which does not belong to him; he is however bound to pay the indemnities mentioned in the proceding articles.

ART. 1054. — When the whole ship has been chartered for, the charterer may compel the Master to start on the voyage as soon as there is on board a sufficient cargo to guarantee the payment of the freight, the primage, the lay-days and demurrage, or if giving sufficient bail for the payment of same.

In that case, the Master may not accept cargo from a third party, without the charterer's written consent, nor has he the right to refuse to sail, unless he be prevented to do so by a force majeure.

ART. 1062. — When the charterer has loaded a quantity of goods superior to that mentioned in the charter-party he shall pay an additional freight corresponding to the additional quantity, in accordance with the contract, whether the rates of freight have gone up or down in the meantime;

the Master however if he cannot ship this additional quantity under hatches and properly stowed, without failing to the other contracts concluded by him, shall discharge such goods at the expenses of the owners of same.

Chilian code of commerce :

ART. 1014. — The charterer who does not supply the whole cargo for which he contracted, shall pay the freight for that part which he does not load.

Art. 1015. — If the charterer loads a quantity of goods larger than that contracted for, he shall pay for the quantity in excess the same rate of freight as stipulated in the charter-party.

Art. 1017. — If, trough the act of the charterer or of his consignee, a ship chartered for an outward and homeward voyage sails home without cargo, the lessor (shipowner) shall be entitled to the whole freight stipulated and to an indemnity for the delay.

Art. 1022. — Before or after embarking the whole or part of the cargo, the charterer shall have the right to cancel the affreightment, either wholly or partly, provided he pays one half of the freight stipulated.

In the second case, he shall pay in addition the costs of discharge and the losses caused thereby.

The preceding rules are applicable to the case of cancelment of a contract for an outward and homeward voyage (*redondo*).

If the ship was chartered per month, the dead-freight to be paid by the charterer shall be the freight corresponding to half the time which the voyage would probably have taken, such delay to be calculated by experts.

Japanese code of commerce :

Art. 593. — At the request of the charterer, the Master

must commence the voyage, even if all the goods are not yet loaded by the charterer.

The charterer who requires this shall have to pay, in addition to the whole freight, all costs resulting from the fact that all goods were not loaded, and shall have to give a reasonable bail, if the shipowner requests him to do so.

Art. 594. — When the delay provided for the loading has elapsed, the Master may commence the voyage immediately, even if the charterer has not loaded all the goods.

In that case, the provisions of article 593-2 apply by analogy.

Art. 595. — Before the departure of the vessel, the charterer may cancel the contract against payment of one half of the freight.

If the contract bears on a voyage outward and homeward, and if the charterer cancels the agreement before the homeward voyage has commenced, he shall have to pay two thirds of the freight. The same provision applies when the ship must come from another port to the port of loading, if the charterer cancels the contract before the ship leaves the port of loading.

The charterer who cancels the contract after the whole or part of the goods have already been loaded, shall have to bear the cost of loading and discharging.

The charterer, who does not effect the loading of his goods within the delay fixed, is considered has having cancelled the contract.

Art. 596. — The charterer who cancels the contract in conformity with the provisions of the preceding article shall not withstanding be liable for the accessory expenses and all the disbursments.

In the case of Art. 595-2, the charterer shall pay in addition, and in proportion to the value of the goods, a

part of the amount due in consequence of general average, assistance in case of distress or salvage.

Art. 597. — When the voyage has commenced, the charterer cannot cancel the contract unless he pays the whole freight, and complies with the obligations provided by art. 603-1 and guaranteeing all eventuel damages resulting from the landing of the goods, or giving sufficient bail.

Art. 598. — In the case where only a part of the ship is chartered, and where the charterer cancels the contract before the beginning of the voyage whilst the other charterers or loaders do not cancel on their side, such charterer is liable for the whole freight; he may however deduct from same the freight which the shipowner gets for other goods shipped instead of his own.

When goods are loaded partly or wholly, the charterer may not cancel the contract even before the beginning of the voyage, unless all the other charterers and loaders agree to it.

The seven preceding articles apply by analogy to the case of a charter of part of a ship.

Art. 599. — In the case of a charter for loading on the berth, the loader is bound to load the goods without any delay according to the instructions of the Master.

If the charterer fails to load the goods, the Master may notwithstanding begin the voyage. In such case the loader is bound to pay the whole freight, but he may deduct from same such freight as the shipowner obtains for other goods.

Art. 600. — The provisions of article 698 apply by analogy to the case where the loader cancels the contract.

FIFTH QUESTION. — **Delay in loading or discharging. — Shall demurrage be considered as an additionnal freight, or as an indemnity ?**

Will the debition of same be subordinated to a written protest, at least by correspondence ?

We think it useful to give, on the principles put forward in this interesting question, the advice of the learned professors, Messrs. Lyon-Caen and Renault.

A comparative study of the legislations on the subject, and of the documents and the jurisprudence seems to lead to the following double solution :

That demurrage should be completely assimilated to freight;

That a previous protest shall be necessary for determining the time from which demurrage runs.

Lyon-Caen & Renault : *Traité de droit commercial.*

(Vol. 5. Ns 797 & 797*bis*).

The question : what is the nature of demurrage and extra-demurrage has raised very important discussions. Is demurrage an ordinary claim of damages for delay, or is it an accessory claim of the freight ?

This question has a practical importance for various reasons, the principal of which are the following :

If the claim for demurrage or extra-demurrage represents a kind of remuneration accessory to the freight,

a) It ceases to exist, in virtue of Art. 302 of the Code of Commerce, in the case of the goods being lost or taken ;

b) It is guaranteed by the same lien on the goods as the claim for freight ;

c) In case the debtor fails to pay the demurrage or extra-demurrage, the Master may cause the goods to be deposited with third parties;

d) This claim is subjected to the same prescription as the claim for freight;

e) Abandonment effected in virtue of Art. 216 of the Code of Commerce, must include demurrage and extra-demurrage.

f) The Tribunal who has competence to judge diputes relating to freight, has also jurisdiction for solving difficulties raised with regard to demurrage and extra demurrage;

None of these solutions is however true if demurrage and extra-demurrage are only to be considered as damages for delay.

g) The question from what time demurrage is due, is also very interesting. Demurrage runs from the date of the protest against the charterer or the consignee, if demurrage is to be considered as an indemnity for damage, by applying Art. 1139 of the Civil Code, unless it has been agreed that demurrage shall run by right from the expifation of the lay days, and such agreement may be presumed if the laydays are fixed by the charter-party or in the Bill-of-Lading. According to custom, demurrage runs without protest, if it is to be considered as an accessory of the claim for freight. The same question arises as regards extra demurrage, but seeing that there can be no extra-demurrage unless a delay of demurrage has been fixed by the contract, one may decide that this agreement implies that extra demurrage shall run *ipso facto* from the date at which the delay for demurrage expires. In order to represent demurrage and extra-demurrage as mere damages it as been said that they imply a delay in the loading or the discharge, and that an account of this delay itself

the charterer or the consignee must pay and indemnity to the shipowner in virtue of the Art. 249.

It seems however better to consider, together with the Jurisprudence, that demurrage and extra-demurrage represent an additionnel remuneration or freight, adding itself to the principal freight. According to the law, the contract of affreightment is a sort of hire of the ship (Art. 273 Code of Commerce). Now, by delaying the loading of the ship, the charterer uses same during a longer period; so it is only equitable that he pays an additionnal hire. The latter is represented by the demurrage and extra-demurrage.

In Belgium the prevailing opinion is that demurrage and extra-demurrage are to be considered as damages fixed at a lump sum (un forfait). The German Code of Commerce, (Art. 572) does not seem more favorable to the opinion as embodied in the French Jurisprudence.

French code of commerce:

ART. 273. — Every contract........ shall mention :

The indemnity agreed in the case of delay.

ART. 274. — If a delay for the loading and the discharge of the ship has not been fixed by the agreement between the parties, it shall be regulated according to the custom of the plays.

ART. 294. — If the ship is delayed at her departure, during her voyage, or at the place of discharge, by the act of the charterer, the costs of delay are due by the charterer.

ART. 295. — The Master is liable for damages towards the charterer, if through his fault, the ship has been delayed at her departure, during her voyage or at the place of her discharge.

These damages are to be fixed by experts.

ART. 307. — The Master has a prior lien, for his freight on the goods composing his cargo, during a fortnight after their delivery, unless they have passed into the hands of third parties.

ART. 308. — In case of the charterers or claimants becoming insolvent before a fortnight has elapsed, the Master has a privilege before all creditors, for the payment of the freight and damages due to him.

Draft of Mr Delarue :

ART. 304. — If the conditions and the time for loading and discharging have not been determined in the charter-party, the following rules shall apply to contracts of affreightment :

ART. 306. — There shall be granted to the charterer as laydays at the port of loading and at the port of discharge :

1° one free day for each ship ;

2° one day per 100 T. chartered for sailing vessels ;

3° one day per 200 T. chartered for Steamers.

Laydays are reversible.

ART. 310. — If the discharge is not at an and within the total delay allowed as laydays, the ship shall be deemed on demurrage ipso facto. Unless otherwise agreed demurrage days shall be paid at the rate of 50 cms. per gross ton register and per day for sailing ships and at a rate of fr. 1 for Steamers also per gross ton register and per day :

Demurrage is to be reckoned per running day.

Each day commenced is wholly due.

ART. 311. — Unless otherwise agreed, the delay of demurrage shall be eight days for Steamers and 15 days for sailing vessels.

ART. 316. — All amounts due for demurrage and additionnal indemnities are previleged for the same reasons as freight.

Belgian law of 1879 :

ART. 40. — The Bill of Lading. . . . .
. . . . . . must state :
. . . . . . the arrangements as to freight.

ART. 80. — The master has a prior lien on the goods composing the cargo for freight and average if any, for a fortnight after delivery, if they have not passed into the hands of a third party.

ART. 81. — If the shippers or those claiming the goods become insolvent before the end of the fortnight, the Master's claim for payment of freight and average due to him is preferred to all other creditors.

ART. 82. — If the ship is detained on sailing, during the voyage or at the port of discharge by the act of the charterer, the expenses of the delay are due by the charterer.

ART. 83. — The Master is bound to pay damages to the charterer, if by his (the master's) act the ship has been stopped or delayed on sailing, during the voyage or at the port of her discharge.

German code of commerce :

ART. 567 — In the case of a chartering of a whole ship the Master must advise the charterer as soon as he is ready to embark the cargo.

Laydays begin running the day after this notification.

The freighter must wait even after this notification, if it has been so agreed (delay for demurrage).

Unless otherwise agreed no indemnity may be claimed for laydays. To the contrary an indemnity is due from the charterer to the shipowner for demurrage.

ART. 569. — If the convention mentions the delay allowed for laydays or the date at which they shall come to an end,

demurrage shall begin running ipso facto from the end of the laydays.

Failing a special agreement of this sort, demurrage shall only begin running from the moment when the lessor (ship-owner) shall have given notice to the charterer that the laydays are at an end. During the laydays the lessor (ship-owner) has the right to give notice to the charterer at what day he considers the laydays to come to an end. In such case, a second notification is useless in order to stop the laydays and demurrage begins running without further notice.

ART. 572. — If it has not been fixed by the convention, the indemnity for demurrage shall be fixed by arbitration according to the equity of the case.

In order to determine same, account shall be taken of the particular circumstances of each case and namely the contracts relating to the wages and the boarding expenses of the crew, as well as the freight which the shipowner loses.

Italian code of commerce :

ART. 547. — The contract of affreightment . . . . .
. . . . must state :
. . . 7° The compensation agreed on for demurrage.

ART. 549. — If the delay for loading or discharging is not mentioned in the charter party, it is regulated by the custom of the port.

Spanish Code of commerce :

ART. 652. — The policy of affreightment (charter party) shall contain . . . .
. . . 10° The laydays and demurrage which shall have to be counted and such amount as shall have to be paid for each of them.

ART. 656. — If the charter-party does mention within which delay the loading and discharging shall have to be effected, the parties shall refer to the custom of the port in which these loading and discharging must take place. If the delay stipulated or determined by the customs of the port has elapsed and if the contract of affreightment does not contain any special clause expressly determining the indemnity due for delay, the Master shall have the right to require payment for the laydays and demurrage incurred by loading and discharging.

Portuguese code of commerce:

Art. 541. — The contract of affreightment . . . . must state :

. . . . 7° The indemnity agreed upon in case of delay (rate of demurrage).

Art. 545. — If the charter does not specify the time allowed for loading and discharging the ship, the laydays are calculated for a steamvessel at the rate of 120 T. per diem and for a sailing vessel at the rate of 60 T. per diem.

§ 1. — Where there are days over on demurrage, they will be paid at the rate of 100 Reis per ton for a steam-vessel, and at 50 Reis per ton for a sailing vessel.

§ 2. — Sundays and holidays will not be reckoned in the time laid down in this Art. and Par. I.

Art. 546. — If the charter-party is by the month or for a specified time, it will run from the day on which the vessel was ready to load until the day on which the discharge was completed.

Art 551. — If the charter-party does not specify a date on which the ship must be ready to take in cargo, the lessor of the ship may fix it.

Unique §. — A lessor of a ship who fails to have her

ready, at the appointed time, is liable for losses and damages.

Code of commerce of the Netherlands :

Art. 455. — The charter party states :

. . . .

. . . 7° The indemnity agreed upon in case of delay.

Art. 457. — If the time allowed for loading and discharging is not stated in the charter party, these operations must be completed when within the realm or Dutch Colonies within fifteen working days after the Master has given notice that he is ready to load or discharge.

In the case of lighters, three days is allowed from the time of their arrival.

When this delay has elapsed the Master or the lighterman shall have a claim for laydays indemnity against the party in default.

When cargo has to be shipped partly in one place and partly in another, the laydais do not run whilst the ship is proceeding or being transported from one place to the other, and the time so occupied cannot be reckoned :

Art. 458. — In foreign ports, if the laydays are not stated in the charter party they are determined by the law or custom of the port (1)

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(1) The Law of 2nd May 1907 — (Staatsblad, n° 140 *Annuaire de législation étrangère*, v. XXVII, p. 574) — has as far as the time of loading and discharging is concerned, decided that the ships and vessels mentioned in Art. 748, shall not be submitted to the provisions of Art. 547 and that the number of the days for loading and discharging shall be fixed (for the Inland Navigation) according to the capacity of the ship, in conformity with rules to be issued by te General Direction.

This rule has been published by Royal Decree of Januari 3rd 1898 (Staatsblad).

Scandinavian code of Maritime commerce:

Art. 118. — In case of a ship being chartered wholly or partly, the Master is bound to wait for the delivery of the goods during a certain number of days (laydays) and without any indemnity. After this delay has elapsed, the Master may grant a further delay, but in such case against an indemnity (extra lay days). These days together compose the delay of loading.

The delay runs from the working day (inclusive), following the day on which the ship was ready to take in her cargo; the Master is bound to give notice thereof to the charterer. This delay begins running from the day at which the ship has been brought to the place agreed, if the conventions mention a delay according to Art. 114. But if the notice has been given during a holiday, or after 4 o'clock p. m. on a working day, it is to be considered as having been given on the following working day. In the case where the loader should be unknown and could not be found, advice should have to be given by advertising in a local newspaper or by any other means.

Art. 121. — The provisions relating to the delay of discharge are not to be applied to ships plying regularly from one port to another by a regular route, publicly known.

Art. 123. — Where goods are chartered for loading at the berth they must be delivered by the charterer to the Master on the advice given by this latter for their loading. Such advice shall be given according to Art. 118 when the loader is unknown and cannot be found. If however after the advice thus being given the delivery of the goods is not effected in due time, so as to render it easy to embark and stow them, the charterer shall pay the whole freight but the Master shall not be obliged to take such goods.

Art. 137 & 138. — The same principles applied to the discharge.

Art. 154. — For the reception of the goods, the consignee is liable for the payment of the freight and the reimbursment of all the amounts which the lessor may claim from the charterer in virtue of the bill-of-Lading or any other document on which delivery is to be effected.

Art. 155. — In addition to the claims mentioned in the preceding article, the consignee has to pay the indemnities due for each extra lay-day and for other delays during the loading &c. before he shall be entitled to oblige the Master to deliver the goods to him.

Russian code of commerce :

ART. 344. — If the Master does not put to sea at the day fixed by the contract, and if he cannot prove that he was prevented to do so on account of unfavorable wind, or bad weather, he shall have to pay to the charterer of the ship an indemnity for the lay-days, at the rate fixed by the contract for each day.

ART. 353. — If one or more charterers fail to supply within the delay fixed by the contract the goods which are to be embarked on the ship, they shall have to pay to the Master the premium fixed by the contract for each day's delay.

Rumanian code of commerce :

ART. 557. — The contract of affreightment shall mention :

. . . . . 7° The indemnity due in case of delay.

ART. 559. — The delay for loading or discharging the ship, shall be determined by the agreement between parties ; failing such an agreement, it shall be determined by the local maritime Bureau.

ART. 578. — If the ship is delayed at her port of loading, during her voyage or at the place of discharge, by the act

of the charterer, the latter is responsible for the expenses incurred on account of the delay.

ART. 579. — The Master is liable for damages towards the charterer if, through his act, the ship is delayed at the port of loading, during her voyage or at the place of discharge.

Egyptian code of Maritime commerce :

ART. 90. — Every contract for a chartering of a ship . . . . shall mention :

. . . . . . the place and the delay agreed upon for the loading and the discharge ; . . . . the indemnity fixed in the case of delay of the loading or the discharge.

ART. 91. — If the lay-days (meaning thereby the number of days to be affected to the loading or the discharge), are not fixed by the contract between parties, they shall be reckoned according to the customs of the place, if such customs exist; if not the delay shall be of fifteen consecutive working days to begin from the time at which the Master shall have declared to be ready for loading or for effecting the discharge.

ART. 92 — When a cargo must be loaded or delivered partly at one place, and partly at another place, the delay for loading or discharging is suspended during the time of the voyage of the ship from one to another place, and this interval shall not be taken into account.

ART. 98. — The ship, the rigging and provisions, the freight and the goods taken on board shall respectively be affected as security for the execution of the conventions between parties.

ART. 113. — If the ship is delayed at the port of loading, or during her voyage, or at the place of discharge, by the act or the negligence of the charterer or of one of the

loaders, the charterer or the loader is liable towards the Master or the other loaders for the expenses and damages occurring through the delay.

ART. 114. — (The same provisions for the lessor or the Master).

The damages mentioned either in this or in the preceding article shall have to be fixed by expert.

ART. 126. — For the freight, the averages and the expenses for the goods composing the cargo, the Master has a lien prior to all other creditors, on the goods until a fortnight after their delivery, if they have not gone into the hands of third parties.

ART. 127. — If the loaders become insolvent before the expiration of the fortnight, the Master's lien continues to exist on the said goods, prior to all other creditors of the insolvent estates, for the payment of the freight, averages and other expenses and costs due to him.

Mexican Code of commerce :

ART. 727-11° and 731. — (The same text as articles 652 and 656 of the Spanish Code of Commerce).

Argentine code of commerce :

ART. 1020. — Every charter-party shall mention each of the following circumstances :

. . . 5° The delay agreed upon for the loading and the discharge, the number of lay days and the delay of demurrage which shall have to count from the expiration of said delay, and the forms under which they shall expire and be reckoned ;

. . . 7° The form, the time and the place of payment of the freight ; the amount to be given to the Master as primage or gratuity, and also for lay days and demurrage.

ART. 1028. — The bill-of-lading must mention :

. . . . 6° The rate of freight and the gratuity, if any has been stipulated ; also the place and the form of payment.

ART. 1048. — If the charter-party does not specify the time at which the loading is to commence, the delay shall be considered as running from the day on which the Master gives notice that he is ready to receive the goods.

If the charter-party does not fix within which delay the loading or the discharge is to be effected, the amount of the gratuity, the lay-days and demurrage, as well as the time and the form of payment, — all these questions shall be regulated according to the customs of the port where the loading and the discharge are respectively effected.

Chilian Code of commerce:

ART. 982. — The charter-party shall mention :

. . . . 8° The number of days agreed upon for loading and discharging;

9° The lay days and demurrage-time allowed for the case where the loading or discharge should not be ended within the delay provided for these operations, and the indemnity to be paid for each of them.

ART. 987. — If the charter-party does not provide any delay for the loading and discharge, each of these operations shall have to be effected, in the ports of the Republic, within a space of fifteen consecutive working-days, to be reckoned from the time when the Master shall have given notice to the charterer or to his consignee that he is ready to load or to discharge.

In the same case, the loading of small coasting vessels shall have to be effected within a delay of three consecutive working days beginning to run from the date of the contract; and the discharge within an equal delay, to be reckoned from the ship's arrival.

In foreign ports, the loading and discharge shall have to be effected within the delays determined according to local customs, unless otherwise agreed.

ART. 988. — If the charter-party does not specify the delay for lay-days and demurrage, such delay shall be fixed by the local customs.

ART. 1002. — If the lessor, whose contract stipulates that he shall have to take a cargo in another port then that where the charter is concluded, does not receive said cargo from the consignee within the delay fixed, he shall have to give notice of it to the charterer and await his instructions, and in the meantime, the lay days and demurrage-time stipulated by the contract or admitted by the local customs, shall run.

ART. 1036. — The cargo is affected by privilege to the payment of the freight, of the primage, and of the indemnities due by the loaders on account of the charter.

Japanese code of commerce:

ART. 591. — In the case of a charter of a whole-vessel, the shipowner is bound to give notice directly to the charterer as soon as the ship is in readiness for the loading of the goods.

If a delay has been fixed for loading the cargo, this delay begins running from the day following that on which the above-mentioned notice has been given. If the loading is effected after that delay has elapsed, the shipowner may claim a reasonable indemnity, even when such indemnity has not been expressly stipulated.

Days during which loading was impossible on account of a force majeure are not to be reckoned in determining the time allowed for loading.

ART. 592. — When the Master must receive the cargo from a third party, and if the latter cannot be found or if

he does not effect the loading, the Master is bound to advise the charterer thereof without any delay. In such case, the charterer may only effect the loading of the goods within the delay fixed thereto.

ART. 599. — In case of a ship being chartered to load on the berth, the loader is bound to load the goods without delay, according to the instructions of the Master.

If the charterer fails to load the goods, the Master may notwithstanding begin the voyage. In such case, the charterer has to pay the whole freight; but he may deduct therefrom the freight which the shipowner should get for other merchandise.

ART. 602. — In case of a charter for a whole or a part of a ship, the Master is bound to advise the consignee as soon as the ship is in readiness to load the goods.

If a delay is fixed for the loading, such delay is to be reckoned from the day following that on which the above-mentioned advice has been given. If the loading of the goods is effected only after this delay has elapsed, the shipowner is entitled to a reasonable indemnity, even if no such indemnity has been stipulated.

Are not to be reckoned within this delay, the days on which loading was impossible on account of a force majeure.

In the case of a ship being chartered for loading on the berth, the consignee is bound to unload the goods in conformity with the Master's instructions.

ART. 603. — By receiving the goods, the consignee binds himself to pay, according to the contract of carriage or to the provisions of the bill-of-lading, the freight, the accessory costs, the disbursments as well as the amount for which he should be liable in proportion of the value of the goods, by way of general average, assistance in case of distress, or salvage.

The Master has to deliver the goods only against payment of the above-mentioned amounts.

FRANCE

FRENCH ASSOCIATION OF MARITIME LAW.

Conflicts of Law as to Freight

REPORT (1)

on the questions formulated by the International Maritime Committee in view of the Venice Conference, 1907

by L. DENISSE

Dr. Jur. Procureur de la République at Chateaubriant

A. — On which points should Conflicts of Law as to Freight be settled internationally ?

B. — What are, in each case, the best solutions to be recommended ?

A potent reason of the desirability of an international agreement on the questions relating to Freight is that these matters are of paramount importance as well for shipowners as for charterers; the obligation to pay the freight is the heaviest obligation undertaken by the merchant who wishes

(1) On the matter of Freight, the following report of Mr. L. Denisse has been submitted to the French Association. Although this Association could not, at their last meeting, deliberate on its contents, they present it to the International Maritime Committee as being the expression of the opinion of a member who has made these questions the object of deep study. They add a very interesting work of comparative study of Mr. Léon Adam.

to have his goods carried; the cost of freight is the principal item which he has to consider for the calculations which are to be his guide for his over-sea commercial transactions. On the other hand, the hope to receive the freight is the only object inducing the shipowner to sail his ships; freight is the sole profit to be earned by the enormous sums invested in the industry of carriage by sea.

The fundamental questions as to whether freight is due or not, are generally solved in the same direction by the various legislations; but discrepancies arise in the case where the ship is unable to carry her cargo to its destination.

The principal difficulty to be met with, in such case, is: Has the charterer to pay any freight *propata itineris* freight for the distance at which the cargo was carried by the ship thus stopped in the course of her voyage? As well for the charterer as for the shipowner, this question is of the utmost importance; according to the way in which it is solved it may have the most favorable, or the most disastrous consequences as regards the extension of commerce. And this importance increases when we consider that from the solution adopted on the principle of distance freight itself, depend the answers to be given to most of the further difficulties arising in the case where a ship cannot complete her voyage.

All the discrepancies and controversies raised by the three first questions submitted to the conference, merely derive from the different points of view admitted with relation to the distance-freight.

It seems proper not to adopt here a rule which, by submitting charterers to a much to heavy chance of loss, might prove an impediment to commercial transactions; and here we may observe that which seems so very strange: namely that in England, the greatest maritime power of the world, the system followed is that which, at a

first glance, seems to be the most disadvantageous for shipowners.

All our efforts should therefore tend to the adoption, of an international agreement, at least on this principle of distance-freight. Even if only this single point were resolved, it would mean a very great progress, and an understanding on the other difficulties relating to freight would henceforth be the more easy as in varions countries, these very difficulties have not been expressly resolved by a law-text.

In this matter, we may have good hope that a satisfactory result will be arrived at, for this subject has already been examined by several international congresses, which have always adopted the same principle. If that very principle was once more adopted by the international Venice conference,it should have acquired such powerful authority that its adoption would become a matter of course. Besides it was not only by the resolutions expressed at international Conferences that it would be supported, but it was also admitted by the Commission appointed, in France (1865) for revising book II of the Code of Commerce, and everyone knows how highly the labours of that Commission were valued.

The Venice Conference cannot but attach a very great interest to those studies already elaborated on the matter; we refer a. o. to a most able digest on the rules adopted by the international Congress of Sheffield, which was published by M. Molengraaff (1); it contains indeed a very elaborate study on the questions which we have now before us.

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(1) *Etude sur le contrat d'affrètement. Principes fondamentaux d'une loi uniforme internationale. Rev. de dr.* t. XIV, p. 39 & 297.

First Question

I. — Freight « pro rata itineris »

Is any freight due when the vessel is lost during the voyage but the cargo saved wholly or partly? In what proportion, and on which basis?

The terms in which this question is worded and referring to the case where « the vessel is lost », must not be constructed in a narrow sense, but should be understood in a broader meaning, as covering all cases where, in consequence of some circumstances alltogether independant from the will of the parties, the goods are stopped in the course of the voyage and where the ship on board of which they were embarked, cannot carry them to their port of destination. Indeed, it is not merely in case of unseaworthiness of the ship that the Master may be compelled to deliver at an intermediate port the goods which he undertook to carry; this may also happen when his ship must be repaired and when the time required for such repairs would be too long for enabling the cargo to wait till they are completed.

In all cases where the goods composing a cargo are put to the charterer 's disposal, not at the port for which they were bound, but at an intermediate port, the question arises whether the charterer shall have to pay, or not, any freight for the portion of the voyage already accomplished. Freight which might be due for such part of a voyage is called « distance-freight », « freight *pro rata itineris* » or « proportional freight ».

It must be observed that the question whether a distance freight may be due or not can only arise in such cases where the goods are stopped at in intermediate port on account of circumstances which are entirely independant of the will of the Master or of the charterers.

On that very question, the various legislations have given three solutions ; some decide that no distance-freight is due, others decide that a distance-freight shall be paid, whilst a third category of legislations admit on this point an exception on the rule according to which no goods may be abandoned as against the freight, and decide that such proportional freight may never exceed the value of the goods to which it refers.

Then, the legislations allowing a distance freight again differ as to the mode of its calculation : some of them determine it by a purely mathematical computation of the distances ; whilst other also take into account the difficulties of the voyage and other circumstances.

In order to decide what conclusion ought to be adopted on this point, we shall examine successively the following points : to what solution one would arrive by merely considering under a juridical point of view, the nature of the contract of affreightment ; further, what solution should be advocated if one considers the question of equity and the advantages of each of the presently existing systems towards the extension of the commercial transactions.

A. — All legislations have mingled, in a single category, the varions contracts which may be concluded by a shipowner who desires to derive profit out of this ship, although these contracts may be of a nature altogether different. A shipowner may find a person who wishes to have his ship for a certain period of time, who desires even to equip and rig himself that ship ; in such case, according to the special circumstances of the case, it is a hiring of a thing, mingled or not with a hiring of services. But even the text of the question now before us shows that it can only be put in the case of a time — charter ; indeed, we have only to consider the case where goods were remitted to a shipowner with instructions to carry them to a port

named, in consideration of a fixed rate of freight; we must therefore examine whether a shipowner who could only carry the goods for part of the voyage agreed upon, may claim a proportional part of the freight.

If the charter is only a hiring of the vessel and of the services of the Master, the charterer, whose goods have been discharged at an intermediate port, and who has therefore used the things hired up to the moment of the discharge in such port, has to pay a freight in proportion to the use he had of the things he hired, If, to the contrary, the charter is merely a contract of carriage, i. e. a contract the object of which was a personal obligation which may not be divided, it is certain that an execution of part of that obligation cannot oblige the charterer to pay any freight.

We shall therefore examine what is the exact nature of the contract of affreightment in all such cases where it refers to carriage of goods, i e. in all cases of a chartering for a voyage. We will examine this question as well in the case where the goods where merely entrusted to the shipowner, as in the event where it was stipulated that they are to be carried by a determined vessel, or that such vessel exclusively should have to effect the transport.

In the Middle-Ages, the jurists merely considered the contract of affreightment as being a hire of things mingled more or less with a hiring of services and a hiring of work, and most of our modern Commercial Codes have followed their doctrine on this point.

In all Continental legislations, we observe that the charter-contract, whether it relates to a time-charter or to a charter per voyage, is considered by the legislator as a *hiring of the ship ;* the prevailing notion is that such contract is a hiring of a thing. The old jurisconsults, who would have all contracts shaped within the forms and limits of the Roman law, have classified the charter-contract, rather

indiscriminately, in one of the categories existing under that law; they considered that theoretical question as having no importance whatever. One is convinced of this fact when reading on that item Pothier, who is surely one of the most precise and reliable writers and who declares openly that he could form no opinion on this question: « Until now, he says somewhere in his *Traité de la Charte-partie* (1) we considered the charter-party contract as a contract of hiring of things, by which the shipowner, or his servant, the Master, hires out his vessel to the merchant, to be employed to the transport of his goods, and hires out at the same time the services of the Master in order to carry out the transport; it is *locatio navis et operarum magisti ad transvehendas merces*.

« The charter-party may be considered from another point of view, as a hiring of work; *locatio operis*, by which the merchant hires out the carriage of his goods which is to be effected, to the Master who undertakes to carry out the transport in consideration of the price agreed upon; this is *locatio operis transvehendarum mercium*. This difference exists only in the speculation. »

That the contract of affreightment is no hiring of a thing or a hiring of services is a matter of fact and this is so far certain that even the legislators who adopted that principle have been compelled — in order avoid too offending results — to abandon several of the consequences which that very principale implies. So, for instance, in case of loss of the goods carried, we observe that in all countries it has always been admitted that no freight is due; yet, if applying the rules of the *locatio*, it should be decided that a proportional freight is due, calculated in proportion to the time elapsed since the day at which the ship sailed, up to the

(1) Nr 103, Edit Dupin, Vol. IV p. 369.

day at which it is lost, as compared with the total number of days which the whole voyage would have required ; up to the time when the goods were lost, the charterer has indead profited by the ship and the services of the Master. Pothier himself observes : If it be true that the charterer had the use of the vessel during all the time his goods were on board, this use has become entirely of no avail to him, in consequence of the loss which occurred and would have been as useless to other as to himself. » (1)

Further, we observe that all legislations impose upon the Master, under penalty of being liable for all damages towards the Charterer, the obligation to proceed directly and to effect the transport the goods entrusted to him within the shortest possible delay ; now, if there was in fact a hiring of things or of services, how could one explain that the lessor should be liable for damages against the tenant because he should have extended the time during which the latter has profited by the thing hired.

The Commercial codes in which the affreightment is considered as a hiring, contain still other provisions which are in downright contradiction with this conception ; so, for instance, in the case where the ship cannot carry the goods to their destination, the obligation imposed upon the Master to hire another vessel to complete the voyage of the goods ; this cannot be explained if one admits that there is in fact a contract of *locatio*, as such contract is certainly cancelled the very day when the thing hired, perishes.

The fact that even the legislators who considered the contract of affreightment as a contract of hiring were compelled to deviate, on several points, from the rules applying to the hiring contracts, proves strongly enough,

(1) Traité de la charte-partie, nr 63. Edit. Dupin, vol. IV, p. 356.

that they considered the question under a false principle. They could only apply the consequences of such principle to some cases where — as in the present instance — the results do not show, at a first glance, abnormalities too striking with equity.

This fact that the contract or affreightment is not to be considered as a hire-contract not only follows because in many cases, it is quite impossible to apply to same the rules of that contract; but it is also clearly proved by a close examination of the intentions of the contracting parties.

The merchant who remits his goods to a shipowner, has but one aim : namely to have said goods carried. On the other side, the sole profit which the shipowner hopes to earn by his ship is the price which shall be paid to him for the carriage of the goods entrusted to him. At the time at which they conclude a charter-party, the shipowner as well as the charterer only consider the carriage of goods to be effected. And so the affreightment does appear as being merely a contract of carriage.

« It shall never be said, observes Mr de Courcy (1) — and it would be a erroneous construction —, that he who remits some packages at the railway-office, concludes a contract of hiring of a railway; he merely concludes a contract of carriage. The same occurs if any party remits merchandise at the reforwarding office of a steamship company or to the Master of a ship loading in port. This also is merely a contract of carriage, — which is a thing altogether different from that which the word « hiring » presents to one's mind ».

Will the nature of the contract be modified by the fact that the agreement provides that the transport shall have

(1) *Quest. de dr. marit.* vol. 1, p. 124.

to take place by a determined vessel, or that the charter-party is for a whole ship ?

This has been contended ; it was argued that the chartering of a whole vessel or even the indication of a ship transform the contract, at least in some measure, into a contract of hiring of a thing.

This construction seems to us to be based on a false analysis of the will of the parties. The charterer who stipulates that the carriage of his goods shall be effected by a ship named, or that another ship, also named, shall be exclusively affected to the carriage of is goods, has no other object than to satisfy himself that the transport of his goods shall be effected in good condition ; and the clauses in question are only accessory forms of the contract of affreightment. For transports by railway, the loader may also stipulate that his goods shall be forwarded with such or such train, — by a direct train or express, or by an ordinary train ; he may further require that they be loaded on trucks of a particular type ; finally it often happens that a merchant requires his goods to be forwarded by a special train, which is exclusively affected to such transport ; in all such cases, nobody has ever expressed the slightest doubt that there was a mere contract of carriage.

Some goods require to be carried with the utmost speed, other goods may be damaged by coming into contact with some other stuff ; the merchant who should merely remit his goods to a navigation company, without caring whether they shall be transported in a proper condition, would run the risk to see his goods delivered at destination when having lost the greatest part or even the whole of their value ; if to the contrary he takes the necessary precautions to have his merchandise embarked by a rapid mail boat and to prevent their being stowed close to other goods whose smell or effluvium may prove noxious to his property,

he has done all he could in order that the transport gives him all the advantages which he might expect therefrom.

The chartering of a whole vessel may still insure to a merchant an advantage, not only because his goods will be carried with much more speed, so that they reach their destination before those of his competitors; that they will be loaded in better conditions, but also that probably the shipowner shall consent to him a lower rate of freicht.

A strong proof of the truth of this, namely that the provisions in question merely serve to insure a good execution of the transport, is the fact that often, parties merely refer to the classifications of the *Bureau Veritas* or other similar institutions and stipulate that the transport shall have to be effected with a ship of such class.

The affreightment constitutes therefore, not a hiring, but a contract of carriage (1); now, for the contract of carriage, the obligation which the carrier undertakes is of an indivisible character. This was very clearly pointed out by the very learned professor Mr. Labbé : « A voyage which was commenced but not ended does not represent any advantage, any value, any service rendered. Until the arrival at destination, nothing is done; no result is obtained for him on whose account the voyage is undertaken; one might recall here the Chinese saying : when one has to walk ten paces, nine is only half of the way. We even go a little farther, and say that the avantage of the voyage is nil until it be completed. (2)

So, if reference should be made only to the application of the rules deriving from the judicial nature of the contract

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(1) As to the nature of the contract of carriage, see Lyon-Caen and Renault. *Tr. de dr, Mar.*, vol. III, Nrs 549, 559 and foll.; Aubry and Rau, *Traité de la législ. et de la jurispr. sur les transp. par chemin de fer,* Nos 3 and foll.

(2) *De la perte de la chose due*, Nr. 107.

of affreightment, one would be led to decide that no freight *pro rata itineris* should be ever due.

B. — Does another solution present itself if one refers to the arguments of equity and the requirements of commerce?

In favor of the distance-freight, the following arguments are put forward:

If the shipowner loses his ship, it is unfair to add to this first loss the loss of the whole of his freight; he must be allowed to claim from the charterer who did not lose his goods, a freight in proportion to the distance effected.

This is in fact the argument which is the most striking, and which prevented a closer examination of the equity of the distance freight; it was felt that, after the disaster of the venture, if the charterer was entitled to withdraw his goods, it was but just that he should only do so against payment of a certain amount to the shipowner: this is some sort of division of the risks which seems in conformity with justice.

It is added that the Master, who would be entitled to the whole freight if he had succeeded to find another vessel for carrying the goods further to destination, must not be deprived of any remuneration if he could not procure another ship, if no negligence can be imputed to him as to the measures he has taken to that effect: for in such case the Master would be suffering on account of a circumstance over which he had no control at all and in which there was no fault whatever on his side.

Finally, it is said that even the partial voyage of the goods effected, has procured to the charterer some advantage for which the latter owes some consideration to the shipowner. Doubtless, this advantage shall not always be accurately equal to that part of the voyage which was effected, but in order to avoid the very great difficulties which would certainly arise if in every case special calcula-

tions and valuations had to be made, it is much better to fix at once a rule determining broadly, at a lump sum, the profit procured to the charterer, fixing at the same time the amount of freight due by him.

Now, all these arguments can only be accepted if in fact the partial execution of the contract of carriage represents an advantage for the charterer in every case, or at least in most cases; but we shall soon see that this is not a all true.

A partial transport shall represent an advantage to the charterer if, at the port where they were discharged, the goods are sold at a higher price than that which they had in the port of loading, or if from that spot, they can be reforwarded to their destination at a lower rate of freight than that which was to be paid for shipment from the first port whence they were shipped.

The advantages which may result from these differences of prices may be very small, and probably much inferior to the distance-freight which the charterer has to pay, if it is calculated in proportion to the distance effected; so that, after payment of that freight, it is quite possible that the charterer finds himself in a worse position than if his goods had remained at the port of loading.

It is even possible that first of all, and outside of any freight to be paid, the partial transport of the goods causes a loss to their owner.

The ship may have run aground somewhere at a great distance from a commercial centrum, where it is equally impossible either to reforward or to sell the goods. Even when the cargo is discharged into some port, it may happen that on that spot, the market-price of the goods which compose that cargo is very low; further, the disadvantageous conditions in which the sale has to take place can but force down the prices. On the other hand it may be

very difficult, sometimes even impossible, to have the goods sent away to the port whither they were bound, if there are no communications between that port and the spot where they were discharged; for in such case, they should be fetched by a ship having first to come thither from a distant port, and if the goods are not high valued wares, it would be out of the question to burden them with such costs of transport, which would exceed their value.

Further, one should take into account the circumstance that unless in a port where navigation is intense, the Masters, finding that goods are necessarily to be reforwarded, would not omit to avail themselves of that circumstance to get a higher rate of freight.

Besides, it must be observed that if the goods are stopped at an intermediate port, it is because their reforwarding from that port is at least exceedingly difficult, for if not, the Master himself would not fail to do himself this reforwarding.

It is therefore apparent that a partial transport of goods can cause to their owner a very serious loss, and may even leave him in the same position as if the goods had been lost.

If, under such circumstances, the charterer is, in addition thereto, compelled to pay a distance freight, he shall lose more than the value of his goods; and there shall be a violation of the rule that nobody must lose by a maritime venture, more than his estate he risked thereon.

That is the reason why, in order to respect this principle, several legislations have added to the provision which requires the payment of a distance freight, this allying prescription that the charterer may free himself of this obligation by abandoning his goods.

So, we are very far from the alleged principle of equity

according to which the charterer should contribute to the loss of the shipowner because he receives his goods.

The loss suffered by the charterer may be superior to that which the shipowner has to bear. In fact, the latter does not always lose his ship; the goods may be prevented from reading their destination merely because they cannot wait until the complation of the repairs which the ship should have to effect at a port of call.

The argument put forward by those who advocate distance freight, and who pretend that the Master must not be deprived of a proper renumeration because he could not reforward the cargo, although no fault can be alleged to him, would be to the point if in all cases it was more advantageous to effect this reforwarding; but if the second rate of freight to be paid was too high as compared with the value of the goods, the Master must, of course, not be allowed to effect so ruineous a speculation. Besides, the mere fact that there was no fault to be alleged against the Master cannot have any influence as to the consequences of the non execution of the contract through a force majeure; these are two notions quite distinct the one from the other; if there was any fault on the side of the Master, it would only give raise to a claim for damages; if there is none, that is no reason why it should impose any obligation on the charterer.

Neither the greatest maritime power, England, nor the United States have admitted distance freight; and Belgium followed their example.

In France, the Commission appointed in 1865 in order to revise the legislation relating to maritime commerce, the labours of which are so remarkable, had also concluded that distance freight ought to be suppressed; article 298 of the draft of law drawn up by this Commission, in the year 1867, is worded as follows; « No freight is due for

goods which in consequence of the ship being wrecked or declared unseaworthy, shall not reach their destination ». « I have no fear to assert, says Mr. de Courcy when alluding to this provision, that this is equity, and that it is commercial good sense too...., unfortunately it is not law ». (1)

The abolition of distance freight was also advocated by the international Congresses meeting at Sheffield, on October 5th 1865, under the patronage of the *National Association for the Promotion of Social Science*, and by those held at Berne, in 1880, and at Antwerp, in 1885 (2) at the initiative of the *Association pour la Réforme et la Codificatiou du droit des gens.*

In the preliminary labours of the Belgian law of August 21st 1879, the following motives are put forward with regard to the suppression of distance freight: « Can it be said that, when the cargo is not lost, the Charterer must have derived from the partial transport ot such goods a profit for which any remuneration is due? According to our opinion, this is construct erroneously the intention which lays at the bottom of the contract of maritime hiring.

« In fact, the obligation undertaken towards the Charterer is to carry the goods to a fixed spot, the mention of which is a *sine quâ non* condition of the agreement. The carriage to an intermediate spot, between the port of shipment and the port of destination, very often puts the Charterer in a more onerous position than it would be if the goods were still at the port of shipment....

» Therefore we propose, in accordance with the French draft, to consider the execution of the contract of affreightment as indivisible, and accomplished only when the

(1) *Quest. de dr. marit.*, vol. I, p 161.
(2) See *Revue Int. de Dr. Marit.*, vol. I, p. 429.

merchandise is carried to its destination. If the carriage is thus executed, the whole freight is due; but if the goods are left on the way, no freight shall be due at all.

» We shall thus have our legislation in accordance with the law of England and with that of the United States which, — as the French Commission quite rightly remarked, merely followed the traditions of Roman law, whilst our code diverged from it.

» We will thus do justice to the wish often expressed by international congresses. On the other hand, we will give a serions sanction to the obligation imposed upon the Master whose ship is stopped during the voyage, to find another vessel in order to execute the contract of affreightment ». (1)

If the preceding remarks lead to the conclusion that it should not be made a principle of law to oblige the charterer to pay a distance freight, they also show however, that in some cases, the charterer should have to pay a remuneration to the shipowner.

Indeed, the arguments which may be put forward against the admission of a freight *pro rata itineris* derive all from this consideration that, from the point of view of equity, it would not be just always to impose it upon the Charterer as the latter does not always find any profit by the partial transport accomplished, while be may even suffer thereby a very serious loss. But these arguments only lead us to the conclusion that we must not make this obligation of paying distance freight a *ne varietur* rule, applying to all cases whatever.

There are some instances where a partial transport can represent for the charterer a great advantage : so, f. i. it may happen that the goods are sold at an intermediate

(1) Jacobs, *Le dr. marit belge,* vol. I, p. 415 & 426.

port, in very favorable conditions, at a price as high, or even higher than at the port of destination; then, the port at which the goods are left may be very near to the place of destination, and even if the Master was unable to find another vessel and to bring them to that port, at least will it be possible, within some small delay to load them on another ship, or they may possibly effect by rail or by canals, the remainder of the voyage.

In such cases, as the partial transport which was effected has procured an advantage to the charterer, the latter owes a remuneration to the shipowner; for the fundamental principle of law, according to which nobody must enrich himself to the cost of another, would not allow the charterer to profit by this carriage of his goods without indemnity to the Master.

Thus, the obligation to pay a freight *pro rata itineris* seems to us to find its source only in the principle of unjustified enriching; consequently such freight may be allowed only in such cases where the charterer has profited by the partial carriage of his goods, and then only in proportion to such profit. By paying such freight, the charterer may at the best be put in the same position as if his goods had not left the port of shipment, but never in a worse position.

Although the Master could not find another ship to carry the goods to their destination, it may happen that shortly afterwards, the charterer himself be enabled to do so. If the goods complete the voyage in such way, the principles just mentioned do not leave any difficulty as to the distance freight; the rate paid for the second voyage shall clearly show, indeed, whether the first partial transport has procured any advantage to the charterer. If that rate is inferior to the freight agreed upon with the first ship, the difference shall represent the advantage gained, and

consequently also the amount of the distance freight. At any event, such difference shall have to be wholly paid to the owner of the first ship; if not, the charterer would have his goods carried to destination for a lower freight than that which was primitively stipulated, and he would have the benefit of an advantage the more unjust because it is the consequence of a fortune de mer befalling the shipowner.

How should distance-freight be calculated in the other cases ?

In his learned *Traité de Droit Maritime*, one of the highest valued works on the subject, our distinguished Colleague, Mr. Lucien de Valroger says, that the surest rule is to take as a basis the difference, found at the port of destination to exist between the rate of freight for the port where the goods where primitively shipped and the rate of freight for the place where they were left during the voyage(1); and this theory appeared so equitable, that it has been adopted by the French jurisprudence, notwithstanding the provisions of our Commercial Code. (2).

According to another system, embodied in the German and Scandinavian Commercial Codes, not only the proportion existing between the distance effected and that remaining to be completed, but also the costs, the dangers and the efforts relating proportionaly to each of these distances, should be taken into account. The objection which one might make against this system is that these varions items only concern the shipowner, but that they are quite alien to the charterer. The truth is that these considerations must normally influence the rates of freight and

(1) Vol. II. nr 832, p. 340 : See to the same effect : Cresp et Laurin, *Cours de dr. marit.*, vol. II, p. 177.

(2) Trib. of Commerce of Marseilles, Novemb. 9th. 1857, *Journal de jur. de Marseille*, 1857, I, 294.

so this system mingles, in some sense with the preceding one.

Finally a third system only considers the distances; it is argued that, in this way, the whole difficulty is solved by a purely mathematical operation — which is already a great advantage; legislations requiring other circumstances to be taken into account, must at once suppose that a law-suit is to arise, and must provide the appointment of experts.

Besides, the mode in which distance freight should be determined is of secondary importance; it would suffice to agree as to the cases in which it should be due, and the maximum amount which it should not exceed.

The solution which we recommend is, in fact, but in a more pricise form, that which was adopted by the Brussels Congres of international Law, of 1888 (1) and which is proposed by M. Jacobs in his draft for an international law, a highly appreciated work (2); both these texts decide that the amount of distance freight should be fixed *ex æquo et bono.*

In the comments which accompanied the proposition adopted by the Brussels Congress in the report of M. Jacobs, the latter had expressly mentioned the view that the charterer who does not derive any advantage from the partial transport, should not have to pay any freight: « We are now going, he said, to propose you to allow a freight in proportion of the advantages which this partial voyage may represent for the Charterer. It may happen that at the spot where the Master discharges the goods they have no greater value than at the port whence they have come, or even an inferior value than at the port of departure: in such case, it would be unjust to allow him any freight. But if

(1) See *Rev. Int. de Dr. Marit.* Vol. IV, p. 375.
(2) See *Rev. Int. de Dr. Marit.* Vol. IV, p. 366.

already very near to the termination of the voyage, there were only some small expences required in order to bring the cargo to destination — would it not be equitable that the Master be paid for the services rendered by him? We therefore propose that in such case the freight be fixed according to the rules of equity : *ex æquo et bono* » (1).

This solution does not contradict the resolutions arrived at by the Congresses of Sheffield, of Berne and of Antwerp. Like these latter, it admits indeed the suppression of distance freight as far as the obligation to pay that freight would be a direct consequence of the contract of affreightment itself; it does not permit the claim for distance freight to subsist as a right which the shipowner may enforce in every case, but only as a right which may come to existence only under some special circumstances.

The principles admitted in England practically lead to the same result; in fact, if they decide, that as a principle, no distance freight is due, they nevertheless require that such freight be paid in all such cases where the charterer agreed expressly or tacitly, to pay same, and the mere fact that the charterer accepts the goods at the intermediate port, implies on his part the tacit obligation, unless the contrary be proved.

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(1) See *Rev. Int. de Dr. Marit*, vol. I, p. 666.

SECOND QUESTION.

Of freight in case the cargo is sold

Is any freight due for goods sold during the voyage : — 1° for the necessaries of the vessel ; 2° in consequence of their damaged state : a) *if owing to a « vice propre »* ; b) *if owing to accident (fortune de mer). — In what proportion and on what basis ?*

1° SALE OF GOODS FOR NECESSARIES OF THE SHIP

We have only to consider the case where the Master has sold, in the cours of the voyage, part of the cargo in order to defray urgent necessaries and when he was unable to procure in another way the necessary moneys ; if the Master had effected such sale without any necessity, the owner of the goods sold should not only not have to pay any freight, but he would have a claim for damages.

When the Master, having thus procured money during the voyage, duly reaches his destination, it is but just that he places the owner of the goods sold in the same position as if such goods had not left the ship, that is to say that he has to refund to the owner of such goods the value which they would have had at the port of destination itself

Now, if the Charterer encashes the same amount which he would have got if his merchandise had effected the whole voyage, he is also bound to pay the whole freight, as would be the case if his goods had reached their destination. This is merely the application of the general principle that the Charterer owes the full freigt in each case where he receives the value of his goods at the port of destination ; and this principle justifies itself easily as it is

based on the idea that the Charterer cannot enrich himself to the cost of the shipowner. He has the same advantage as if his goods had been delivered at the very port for which they were shipped, and he must therefore bear the same liabilities.

In virtue of that principale, the shipowner must not only deduct the rate of freight from the amount which he has to refund to the Charterer as representing the value of the goods sold, but he must also deduct the custom-rates, the cost of discharge and any other expenses which would have been necessary had said goods effectively reached their destination; all these various expenses are to come into account for determining the value of the goods at the port of destination, and if the Charterer receives that value, he has also to bear these costs.

It may happen that the price at which the Master sold the goods is superior to that which they would have represented at the destination-port. In such case, shall the shipowner have to refund to the Charterer the price at which the goods were effectively sold, or will it be merely the price of the goods at the port of destination?

This last opinion has been defended. If the price at which the goods were sold is inferior to their value at destination, the shipowner is bound to make good the shortage; so it was contended that reciprocally the shipowner must have the benefit of any difference in excess.

But it is quite apparent that no such system can prevail; the power given to the Master to dispose of the goods during the voyage is already, in some way, an encroachment on the right of the owners of the cargo shipped; but it is necessary to grant that power to the Master who night be otherwise unable to continue the voyage; but at least he should only make use of that power with the utmost caution and it would in no way be permissible, if the sale

thus necessary has proved favorable, that the Master be allowed to derive any profit out of same.

Besides, we consider that we may not deny to the cargo-owner the right to ratify the sale effected during the voyage by the Master and to take over that sale for his own account, consequently also to claim the price thereof. Of course, the charterer should not be allowed, under pretence that he takes the sale on his own account, to contend that he is not liable for the whole freight, but only for a proportional freight, up to the port where the goods were sold. It would be shocking indeed if the Charterer could diminish his liabilities on account of the fact that he receives more than the amount which he might reasonably expect; on the other hand the ratification of the sale could only have the consequence that he should be put in the same position as if he had voluntarily whitdrawn his merchandise; and it is understood that if the Charterer withdraws his merchandise during the voyage, he has to pay the whole freight.

The Master may have embarked other goods to replace that part of the cargo which he sold. Shall the new freight thus carried profit to the shipowner or to the owner of the goods sold?

It might be contended that for the latter it is sufficient not to suffer any loss in consequence of the fact that the Master was compelled to dispose of his goods; that if only by means of the sale of said goods the voyage could be continued, the shipowner gives him a sufficient indemnity if placing the cargo in the same position as if his goods had reached their destination; but that any profits earned on account of other contracts of affreightment which the Master was enabled to conclude for the remainder of the voyage, do not concern him in any way.

It seems more equitable to us to adopt as an absolute principle that the shipowner may never derive any profit

out of the circumstance that he was compelled, during the voyage, to dispose of part of the cargo. Not only would this principle be a safeguard for the right of the cargo-owners, as it should protect them against all abuses possible, but it also involves a just attenuation of the powers given to the Master, seeing that it leaves to the owners of the cargo all possible chances which may result from the transaction.

We will now consider the case where the ship does not reach her port of destination.

Two notions may be put forward : on the one hand one may suppose that the goods sold continue their voyage with the ship herself and consequently, decide that in case of loss of the ship, these goods shall be supposed to have perished also; the result would be that the parties shall have no claims to enforce the one against the other; the shipowner having no sale price to refund to the charterer, and the latter having to pay no freight. This very system was adopted by the draft of 1867 (art. 296); and under the terms of the Decree of 1681, which did not contain any provision on that point, it was defended by Emerigon.

In favour of that view, it may be said that it places the parties in the same position as if the goods had not been sold. In this way, there would be a perfect similarity in the events of due arrival at destination and loss of the ship; for in both cases, the owner of the goods of which the Master has disposed, is placed in the same position as if these goods had remained on board.

This system also allows the shipowner to profit by the proceeds of the sale of the goods, but would it not be just te leave that advantage to the shipowner, seeing that there is no legitimate reason why the charterer should have the profit thereof. In fact, the latter has nothing to do with the

sale ; — besides this sale was not voluntarily effected, but only under the compulsion of circumstances; the Charterer's intention was that these goods should not have left the ship; and if they had remained on board, they would have been lost in the shipwreck. It may be added that it seems very natural that the claim of the Charterer, which arose in connection with the necessaries of the ship, follows the fate of the venture ; the Charterer is in some way a lender on bottomry on the ship.

The principal default of that system is that it is entirely based upon a fictious notion : namely to suppose that if the goods had remained on board the ship, they would have been lost with the ship herself. Now, in whatever circumstances the ship may be wrecked, it is always utterly impossible to affirm that if goods had been on board at that time, they would not have been salved.

There are still two other systems which both agree to admit the solution that the shipowner has only to refund to the owner of the goods sold the nett produce of the sale ; the difference between these systems only refers to the question whether the whole freight, or only a proportional freight, should be due up to the place where the sale took place.

It seems to us that there is no justification for the opinion that the whole freight should be paid ; indeed, the full freight can only be due in case the goods reach their destination, when their value at that port is paid out to their owner or when the latter withdraws his goods in the course of the voyage ; now, in the present case, none of these suppositions is true, and the goods were not withdrawn by the act of the charterer or on his behalf. Those legislations which allow the whole freight all contain the moderating provision that the Master may only claim this freight by deducting it from the proceeds of the sale of the

goods; at least in this way the loss suffered by the charterer cannot exceed the loss he suffers on his goods.

If it where decided that a proportional freight should be paid, up to the place where the sale was effected, we shall refer to what has been said above with relation to the distance-freight Here also, it seems sound logic to admit that this distance freight cannot be due unless the partial transport has procured any advantage to the charterer, *i.e*, in this case, if the goods have been sold at a price superior to the current price at the port whence they sailed; the amount of that freight may never exceed the difference between these two prices, seeing that the claim has its sole origin in the profit realised by the charterer.

Therefore, if the Master sold the goods only at a price equal or inferior to their value at the port whence they sailed, we think the shipowner must be obliged to refund that price to the charterer, without being entitled to any freight.

In the case where the goods were pledged instead of being sold, the shipowner shall have to refund to the charterer only the amount borrowed and the deed of loan; and to solve the question whether or not a distance freight is due, it has only to be considered if the partial transport of the goods represented or not any advantage for the charterer.

2° SALE OF GOODS IN CONSEQUENCE OF THEIR DAMAGED CONDITION.

If, at a port of call, goods are sold by the Master because the latter should find that, owing to their bad condition, they could only arrive at the port of destination in a spoiled condition, or if he finds that these damaged goods would waste the remainder of the cargo, the shipowner can only have to answer to the owner of such goods for the nett

proceeds of the sale. Is any freight due as regards such goods?

In order to answer that question, it will be necessary to establish a distinction between the case where the damages are owing to a « vice propre » and the case where they are owing to an accident (*fortune de mer*).

a) *Goods damaged owing to a « vice propre »*. — If the damaged condition of the goods which caused them to be sold, is only owing to their « vice propre », it must be decided, without any difficulty, that the whole freight is due; in fact, such case must be assimilated to the event where the goods are voluntarily withdrawn; the charterer has no right to complain; it rested with him to put on board the ship a merchandise in a fit condition to effect the voyage. To the contrary, the other charterers or the shipowner may be entitled to claim damages against the owner of such goods, if in consequence of their bad condition, they have suffered any loss.

The shipowner shall have the right to claim the whole freight, even if the ship has been declared unseaworthy at the port where the damaged goods were sold, if the remainder of the cargo has continued the voyage on board another vessel chartered by the Master; for in such case, it is merely in consequence of a circumstance for which the charterer has to answer, that such goods were not carried to their destination.

b) *Goods damaged owing to accident* (fortune de mer). — When goods sold by the Master on account of their damaged condition, were in such a state owing solely to an accident (fortune de mer), should it be decided that such goods shall pay the whole freight?

According to our opinion, this solution seems justified, as well from the point of view of equity as from the legal point of view.

The Master, if he sells during the voage damaged goods which cannot be carried up to their destination, acts thus solely to protect the interests of the owners of such goods; in fact, he is entitled to claim freight for all the goods which he delivers at destination, whatever damages they may have sustained ; now, if he was denied any freight for the goods which he sold during the voyage, he would be placed before this alternative : his duty, or his interests ; on one hand, his duty dictates him to protect the interests of the charterers, by selling their damaged goods, and on the other hand, his own interests would dictate to keep the goods on board up to the port of destination, in order that he may get his whole freight.

This case may be assimilated to the event of the voluntary withdrawal of the goods, for, by selling, the Master only executes that which he presumes to be the express desire of the charterer ; certainly, if the latter was present, he would not hesitate to order the sale of the goods, the value of which is constantly diminishing, and which shall most probably be quite unsaleable when arriving at destination.

If they were disposed to pay the freight, the charterers would gain a double profit in consequence of the transaction concluded for their account by the Master ; first they would encash the proceeds of the sale effected at the port of call, whilst at the port of destination they would probably have got nothing at all for their goods ; secondly they would be dispensed with paying freight whilst they would have had to pay same, although receiving at destination goods without any value.

Charterers cannot in any way complain about their obligation to pay the freight agreed ; for, before shipping their goods, they had to weigh all the risks of the venture in which they were going to involve themselves ; they

knew that these goods could be damaged by the risks of the sea and that, at the time of the discharge at destination, they would have to pay the freight of these goods, in whatever damaged condition they may be. If selling during the voyage the damaged goods, the Master has minimised their loss as far as possible; he bas been the manager of their interests and it is surely not on account of an act thus performed on their own behalf that the Charterers might rely to pretend escaping the payment of the freight.

Besides, even if one would decide that in such case freight is not due in virtue of the rules on the contract of affreightment, the principles on the *gestio* would always allow the Master to claim from the owner of the goods sold, the freight of which he deprived himself by effecting that sale, and in such way he would succeed to get the whole freight.

In both the cases which we have just examined — goods damaged in consequence of a « vice propre » or owing to an accident — the Master has to deduct from the freight which he claims for the goods sold, all the expenses which were saved by the withdrawal of such goods, as well as the freight received for other goods which he may have taken to replace the goods sold, provided always that it be the continuation of the same voyage. If the shipowner must not suffer any loss in consequence of the sale, he must not, on the other hand, derive any profit out of same.

Third Question

Of the freight, in case the ship is declared unseaworthy

Is any freight due when the vessel is declared unseaworthy at the port of refuge, or cannot complete the voyage, but when

the cargo is reforwarded by another vessel and reaches his destination? On what basis and in what proportions?

When the ship can no more continue to carry the goods, the Master must look out for another vessel on which he may reforwad the cargo to destination. For the conclusion of this charter, the Master — who acts only on behalf of the charterers, — has to appreciate whether this operation must or not, be advantageous to them; if the excessive rate of freight claimed should clearly show that the speculation cannot but prove ruinous, he should not conclude; there would then be a moral impossibility to provide another vessel.

If the Master has found means to reforward the cargo, then the question raises by whom the freihgt of the new chartered ship should be paid, and whether the first shipowner is entitled to any freight.

For the study of this question, there are usually, in France, three cases to be examined, according as the two rates of freight are proportionally equal, or according as the freight for the second vessel is proportionally superior to that which was originally stipulated.

We are of opinion that the answer to this question depends on the solution to be given on the principle of the distance-freight itself, and it seems to us sufficient to draw a distinction according as the amount of the second freight is lower or higher than the orginal rate of freight.

If we are to apply here the principle which in our opinion should prevail with relation to the question of distance-freight, according to which this freight finds its origin in the advantages procured to the charterer, one will see that the hypothesis which we now discuss, really constitutes the surest means to appreciate such advantage. The difference between the original freight and that of the second ship having carried the goods to their destination,

represents, in fact, very exactly the profit which the charterer got out of the partial transport effected by the first shipowner; it is therefore equitable that this shipowner receives the amount of this difference, he shall not claim a higher sum; and if the second rate of freight is not inferior to the first freight, he shall have nothing to claim, — as we have seen, distance-freight can only be due in proportion of the advantage which the partial transport represents.

The first shipowner must receive the whole difference between the two rates of freight, even when the new freight should be proportionally lower than that stipulated in the first charter party; in such case, he receives, in consideration of the partial voyage on which he carried the goods, an amount superior to what it would be if calculated in proportion to the distance effected; but we have already seen that *pro rata itineris* freight must not be computed according to the distance effected, but only in proportion of the services rendered, and that such freight must never be inferior to the difference between the original freight and that of the new chartered ship.

If these two freights are proportionally equal, then the advantage procured by the first partial voyage corresponds exactly to the proportion existing between the distance effected and that remaining to be effected. This advantage is, of course, less when the second freight is proportionally higher than the first rate of freight, but then of the amount due to the first shipowner does no more correspond to the distance over which he carried the goods, he cannot complain, while he is entitled to a distance freight only in proportion of the advantage which he procured; if this advantage proves to be *nil*, that is to say, if the amount of the second freight is not lower than the rate fixed for the first vessel, he has nothing to claim.

Not only may the second freight be proportionally higher, but it may even amount to a higher sum than the original freight; the additional difference between the two freights should, in such case, according to our opinion, be borne by the charterer; the loss of the shipowner must be limited to his being deprived of any remuneration with relation to the partial voyage which he effected; but he should not be compelled to expend money in order to enable the goods to reach their destination; this additional freight represents one of the risks run by the charterer and which are for his account.

The solutions which we just expounded are those which were adopted by the draft of revision of 1867 and by the Belgian law of 1879, whose article 97 republishing the text of article 294 of the draft of 1867, provides as follows: « ..... If the goods reach their destination for a lower freight than that which had been agreed upon with the Master of the ship lost or declared unseaworthy, the difference in short between the two freights must be paid to that Master. But nothing is due to him if the new freight is equal to that agreed with him; and if the new freight is higher, the difference in excess is borne by the charterer. »

These are also the solutions adopted by the international congresses of Sheffield, in 1865, of Antwerp, in 1885, and of Brussels, in 1888 and which were presented in the draft for an international law, drawn up by M. Jacobs (1). They are further the solutions followed in the United States and in England, although they are still subjected to controversies in the latter country.

In other countries, namely in Germany, it is admitted that the original shipowner is entitled to distance freight up to the port to which he carried the goods, and that the

(1) *Rev. int. de dr. marit.*, vol. I, p. 666.

second charter is considered as having been concluded for account of the charterers.

The system prevailing in France decides, that in all cases where the second freight is proportionally higher than the original freight, the difference must be borne by the Charterer. The practical result of this system is to admit that the original shipowner is always entitled to a distance freight wich is to be computed according to the number of miles effected. This solution is logically in accordance with that admitted in this country in reference to distance freight; towards its justification, it is argued that the Master, by contracting for a new charter, cannot render his position worse.

It has been contended that it would be contrary to sound logic to decide that the charterer shall have to bear the additional freight in case the second freight is higher than the original freight, when on the other hand he is not allowed to profit by the difference if the second freight is lower; it was said that the charterer cannot be on one side tied to his contract, whilst he should not on the other side; that this double-faced position has no reason and that it is contrary as well to sound logic as to equity.

This objection has been refuted with success; the shipowner may in consequence of accidents (fortunes de mer) neither be deprived of the profit to which he is entitled, nor obliged to pay money out of his own pocket in order to enable the goods to reach their destination; it was further pointed out that a distinction should be drawn between the voyge of the ship and the voyage of the cargo; the fact that the ship becomes unseaworthy puts an end to the former, but the latter continues by the chartering of another ship, on which the original freight, the former insurances, the contract for deliveries already concluded, follow the goods. (1)

(1) Lyon-Caen and Renault, *Tr. de dr. comm.* 3d edit. vol. V. nr 679, p. 477.

Until now, we have considered the hypothesis in which the second ship carries the goods to their destination. But it may happen that this vessel is lost; and in such case the question arises whether, in consequence of the loss of his goods, the Charterer shall be exempted from any payment or whether he shall have to pay to the original shipowner the difference between the two rates of freight which was due to the latter.

The original shipowner might argue that he has acquired a title for his distance freight and that he may therefore always claim same.

In our opinion, it seems better not to consider the two successive charters as being two distinct and independent contracts; from the charterer's point of view, it is always the same voyage which continues, and there is no reason why an exception should be made to the rule that the charterer who does not receive his goods, owes no freight. Besides, if it is admitted that distance freight is only due in proportion to the advantage procured, we arrive at the same conclusion, as in this case it is clearly proved that the partial voyage effected led to no advantage at all.

Fourth Question

Question of half-freight and dead-freight

In the case where the charterer cancels the voyage before loading, or loads only part of the engaged cargo, — shall the indemnity due (half-freight or dead-freight) be fixed legislatively, or should the question be referred to the commun law as to damages?

We shall successively examine the case where the charterer does not load the cargo promised and that where he only loads an incomplete cargo.

a) *Cancelment before loading.* — The merchant who, after

having concluded a charter-party, does not execute same, thereby causes doubtless a loss to the shipowner, because the latter relying on the goods which were to be loaded, has not taken any steps to provide another cargo.

In England, the indemnity for the injury thus done to the shipowner is fixed according to the rules of common law, and the shipowner has, in every special case, to prove the amount of the damage he sustained.

But most of the continental legislations have deemed it more advisable to fix a lump sum as representing the amount of damages due to the shipowner, and they have decided that if the charterer cancels the voyage, without having loaded any goods, before the ship's departure, he shall pay to the Master, as an indemnity, one half of the freight agreed upon in the charter-party for the total quantity which he had to supply.

This rule, like all other estimated fixed rates of damages, has this advantage that it avoides the slowlyness and difficulties of judicial proceedings, and it seems to us that from the maritime commerce's point of view, this advantage is specially to be appreciated. In such matters, law-suits would be the more difficult as in most cases the charterer and the shipowner are of different nationalities. We think therefore highly desirable that all nations should come to an understanding and fix a lump sum, so that the Master may always be enabled to get without any delay, payment of the indemnity due to him.

This indemnity has been fixed at one half of the freight, long ago; it was to be found already in the Swedish Statute of Birca, of 1524, in the Statute of Flensburgh of 1824, and in the old laws of Iceland and Norway (1). It has been taken over by the modern legislations which have

(1) Desjardins, *Tr. de dr. marit.*, Vol. III, n° 821, p. 596.

admitted the principle of a lump sum, and there seems to be no reason why it should be modified.

We think one cannot hesitate but between these two solutions : either the question is to be referred to the common law as to damages, or a lump sum should be adopted : but it is useless to examine the other systems, f. i. that embodied in the commercial code of the Netherlands, which allows the Master, under some formalities as to summons, to effect the voyage as agreed in the charter and to claim the whole freight. We are also of opinion that no notice should be taken of some distinctions admitting only the payment of the half freight where it concerns, or not, a charter of a ship for loading on the berth, or when the delay for demurrage has not elapsed; such distinctions have no rational basis.

There is however one hypothesis where the indemnity of the half-freight may not be sufficient, and which has been especially provided for by some legislations, viz, the case where the ship has voyaged on ballast for taking at same port the cargo promised. One may consider that in such case the contract has been on the way of execution and that consequently the whole freight must be due. (1) It was also proposed to establish a distinction according as, in proportion to its importance, such voyage on ballast may be considered as a preliminary of the voyage planned, or as a distinct voyage; in the first case, the charterer would only be liable for the half-freight, whilst in the second case, he should have to pay the whole freight (2). But the inconvenience of such system is that it leaves room for arbitrariness, for how should it be appreciated whether the voyage effected by the ship for coming at the port

(1) See Spanish Code of Commerce, art. 675.

(2) Jacobs, *op. cit.*, n° 329, p. 360.

where the cargo should be supplied, must or not be considered as a preliminary of the voyage.

On the other hand, the system admitted by several legislations and especially in Germany and in the Scandinavian States, which provides a distinct lump penalty for the case we examine, viz two thirds or three fourths of the freight, seems, in our opinion, to be equally impossible on account of the often too great differences as to the importance of the voyages which may be effected on ballast in order to fetch the cargo; we think it much better to decide that the whole freight shall be due to the Master, under the deduction of the expenses which were saved, and with the additional condition that never the indemnity may be inferior to the half-freight.

Notwithstanding its name, the half-freight in question does not represent any freight at all, but merely damages the amount of which is fixed beforehand; one of the consequences thereof is, that the amount is always wholly due, without any reference being made as to the amount of damages really suffered by the shipowner?

Would it not be convenient to fix also at a lump sum the amount of the indemnity which would be due in all cases where the charterer cancels the contract after having commenced the loading ?

In such case, as the execution of the contract has been commenced, the whole freight is due, but only after deduction of the expenses saved by the Master and of the freight paid for the goods which he embarked to replace the cargo which was not supplied; so it may happen that the charterer who commenced loading, has to pay nearly nothing, if the cancels the contract. It is true that the principles of common law entitle the Master to claim damages on account of the loss suffered by him, but then account must be kept of the lenghtiness and inconvenience

involved by judicial proceedings. The draft of 1867 had, for our case, given to the payment of the freight the character of a lump indemnity, deciding that no deduction should be made thereof, even if the Master had succeeded to complete his cargo. But the amount of indemnity thus fixed appears to be too high, and it seems that it would be sufficient to provide, — as is the case in some countries, — that the amount to be paid by the charterer who cancels his contract shall never be inferior to the half-freight.

If it is decided that the indemnity for damages shall be equal to the half-freight, shall it be said that this indemnity must be due in all cases; or shall it be decided that this rule shall apply only when the character shall have advised the Master of his intention to cancel the contract, reserving to the Master, in the contrary event, the right to claim an higher amount of damages, or even to claim the whole freight?

The solution to be given to this point depends on the decision which is taken as to the question whether the mere fact that the lay-days and demurrage-delay have elapsed shall or not be considered as implying *ipso facto* the cancelment of the charter-party? If that question is answered affirmatively — as is the case in England, namely, — it must be decided that only the half-freight shall ever be due; in the other case, it must be decided that the charterer shall own the whole-freight; in fact, failing any denunciation from the part of the charterer, the contract may not be considered as having been cancelled.

B. — *Incomplete loading.* — The charterer who does not supply the full cargo agreed, shall nevertheless be bound to pay the whole freight which would have been due if the contract had been strictly executed. The reason of such obligation is obvious: the charterer has the right not to

make use of the right to which he is entitled by the contract, but the shipowner must not suffer thereby any loss.

The dead-freight which is thus paid has not the character of damages, it is freight in the true sense ; thereis no necessity for providing a penalty against the charterer who does not load all the goods promised ; if he acts in such way, he is content not to profit of the advantages to which he is entitled by the contract. It is sufficient that he cannot rely on that circumstance to elude part of his liabilities.

As dead-freight is only required in order that the shipowner may get the freight to which he is entitled, and on which he was justly entitled to rely, deduction must be made, from that freight of all expenses saved to the shipowner by reason of the incomplete loading.

The dead freight can also be calculated only on the void space existing in fact in the ship on the time of her departure and not on the quantity short shipped by the charterer ; so the latter profit by the freight paid for goods which the Master has taken on board instead of the goods short shipped, but, as a matter of course, if that freight was superior to that which he has to pay, he could not be entitled to profit by the difference ; he may not find a source of benefit in the fact that he does not execute his contract.

If the void space thus left in the ship had caused ballasting or other expenses, (1) the charterer should have to refund such amounts to the Master. The shipowner must neither suffer any loss nor enrich himself in consequence

(1) An incomplete loading might still involve other expenses for the shipowner in the case where a general-average adjustement should have to be drawn up, as he would then have to bear a larger portion as contribution for the hull. Some legislations, namely the Commercial code of the Netherlands, expressly provide that the Master shall in such case be entitled to have such amounts refunded by the charterer. (art. 466.)

of the fact that the charterer has not supplied the full cargo agreed upon.

One serious difficulty arising on that point is the question on what conditions the dead-freight shall be due.

It does not seem that any special formalities should be required if the charterer has recognised that there was a void in the ship and if consequently there cannot be any discussion on that point between parties; for instance, if the charterer himself mentioned on the bill-of-lading that there was a void.

But outside of the cases where the charterer thus expressly recognises the void, it would be proper that the void be exactly ascertained by a survey which should, as far as possible, have to take place in presence of both parties interested; and we think it desirable to require that the Master should have to regularly summon the charterer to complete the cargo.

Fifth Question

Deley in loading or discharging

Shall demurrage be considered as an additional freight, or as an indemnity?

Will the debition of same be subordinated to a witten protest, at least by correspondence?

I. — There are various points on which this question is of great weight. If demurrage is to be considered only as an additional freight, it must be included in the abandonment of ship and freight, it shall share everywhere the fate of the claim for freight, that is to say: demurrage shall not be due if the claim for freight is not exigible or if it falls under prescription; that it will have as a guarantee the same lien as the freight; that it shall run, by right, in virtue of the contract, without previous notification or

summons, that it shall be suspended on holidays in the case where it is to be reckoned only per working days, and that il shall also be suspended by events of force majeure But if demurrage is to be considered merely as damages, all contrary solutions must be admitted.

The solution to be given to this question depends on the decision which is taken as to what is the nature of the contract of affreightment. If this contract is a hiring of a thing and of services, one is led to say that the charterer, when causing any delay in loading or discharging of the vessel, thereby extends the time during which he profits of the thing hired, he makes use of the ship during a longer period ; the amount due for this extension of the possession it merely an additional hire, increasing the principal hire which is the freight. This system is admitted by the French jurisprudence and doctrine which consider the contract of affreightment as a contract of hiring.

But if, to the contrary, the opinion prevails that the contract of affreightment should be considered — as we have endeavoured above to prove it onght to be — as a contract of carriage, the delays caused by the charterer in the loading or discharge, do no more appear as an extension of the time of possession, but as a non-execution of the liabilities imposed upon the charterer by the contract ; a carriage of goods must be effected with the most possible speed. In such matters, each of the contracting parties is relying on the most possible dispatch on the side of his co-contractor. He of the two who causes delays. infringes the law of the contract, and so the amounts which be owes on that account are really damages.

Demurrage therefore only seems to be the settlement, at a lump sum, of the damages due to the Shipowner in consequence of the delays occasioned by the charterer.

II. — The great number of questions arising with

regard to the demurrage-indemnity, the fact that same, or at least part of it, are provided for in the charter-parties ; and further, that nearly everywhere local customs have established themselves as to it, have had this result that most of the legislations contain only some very brief provisions on that case. So many different cases may arise, in practice, that we think even the text elaborated with the utmost care cannot foresee all difficulties of detail which may arise ; the mere construction to be given to the current clauses inserted in the conventions between parties, give raise, every year, to a great number of law-suits.

Some commercial codes contain however numerous provisions as to that matter.

Notwithstanding that it would be of the utmost importance to make away with the great number of litigations arising by these questions, it seems very difficult to settle those matters by means of an international convention.

But what is desirable is on the one hand, that there should exist for all ports very precise and clear rules as to the duration and the mode of calculating laydays and demurrage, as well as to the rate of the amounts to be paid, etc. and on the other hand, that it be admitted that such questions must always be settled by the customs of the port where the delays occurred. Some commercial codes contain very precise rules, of course, it would be often difficult to obtain that such provisions would be of a general application for a whole State, for the various ports of one country may have on such points customs widely differing — customs which are strongly established and which it would be almost impossible to modify ; but it would be sufficient if it in each port complete and precise provisions were edicted in these questions, so as to avoid the difficulties and litigations that arise every day.

However, an international understanding might be

arrived at on a point which seems to us of a paramount importance, viz, whether the observance of any formalities should be required in order that demurrage begins running?

In favor of a negative answer to this question, it may be said that all formalities are useless, as demurrage-days would begin running, by right, at the expiration of the laydays ; but the uncertainties as to the duration of these latter, and especially as to the way in which they should be calculated, are such, that it seems much better simply to decide that demurrage shall only begin running after a protest issued by the Master.

This necessity for the Master to issue a protest would not represent any inconvenience for him, especially if it be decided that a written protest shall be sufficient, without any special form being required ; we think therefore that the adoption of that rule would not meet with any difficulties. Several legislations decide already that a protest is necessary, but do not agree as to the form in which it should be made. As a general rule, it is never desirable to prescribe forms of procedure, and such forms of procedure are quite useless, especially when they relate to matters of this kind, where dispatch is one of the first conditions required,

It would perhaps be well to examine also another hypothesis, involving often serious difficulties, viz : the case where there are several charterers or several consignees : in what proportion should then demurrage be due by each of the various parties interested ? In our opinion it could be decided that, if the delay appears to be caused by one of them, the latter should be liable for the payment of the demurrage ; if not, that the demurrage shall be apportioned between them *pro rata* of their goods.

GERMANY

GERMAN ASSOCIATION OF MARITIME LAW

REMARKS

by Dr SCHAPS
Judge at the Court of Hamburg

At the suggestion of the Maritime Law Committee of the Netherlands, the questions on Conflicts of Law as to Freight had been put on the agenda-paper of the Liverpool Conference, of 1905. The matter could not be discussed at the Liverpool meeting, in view of which brief reports had been received from the Danish and the Hungarian Associations (Liverpool Conference's report, pages 36/37 and 40/41) but the Report on the Liverpool Conference, (pages 11 and following) contains a « Qestionnaire on Freight » drawn up by the International Maritime Committee, with some explanatory notes.

The following remarks are in reply to the questions thus put forward.

In the first place comes the question whether an international settlement of conflicts of law as to Freight is necessary, or advisable, and to what extent ?

It is true that we have now before us a matter for which parties themselves may stipulate in their contracts the solution they wish in case of contestation (Note, fol. 12); they may submit themselves expressly or tacitly to a determined law, or insert, outside of all legislations, such pro-

visions as they think proper. But generally, or at least very often, the parties interested do not, or do only very rarely avail themselves of this liberty. If they submit themselves to a determined legislation, it may still happen that such law contains some provisions incomplete or contrary to their construction, or also, perhaps that that law leaves the solution of the point in question to another law, the *lex loci* which is evidently not yet known at the time the charter is concluded. Finally, as it is very judiciously observed in the « Notes » (page 12) some difficulties do happen so often that this by itself justifies the efforts made towards a uniform solution.

Such solution is desirable in the first place when the ship and the cargo part before their arrival at the place of destination, because it is not possible to ascertain aforehand where such separation will take place. Now, even the law of that place has been generally considered as applicable to the rights and liabilities resulting, for the parties, from that separation. This is namely the case with the latest jurisprudence in Germany (Hanseatisches Oberlandesgericht. Hanseatische Gerichtszeitung, page 1896, n^r 73; decisions of the Imperial Court in civil matters, 38, n^r 38). Here arise the questions : whether a proportional freight is due, for whose account the reforwarding takes place, and whether any freight is due when the cargo is sold in the course of the voyage.

But an international settlement does not appear as necessary as to the question whether the half-freight is due. If the charterer cancels the contract before the beginning of the voyage, his connection with the lessor is already at an end at the port of loading itself, and the question of half-freight shall be settled in conformity with the contract, eventually according to the law which rules the contract itself ; besides, it would be hardly possible to refer to

another law. For the sake of general uniformity, a unique solution might perhaps be recommended; but it is not a necessity. The same may be said with relation to dead-freight for the case where the charterer supplies an incomplete cargo. For dead-freight, it is true, not only the charterer is liable, but also the receiver, as far as this obligation results directly or mediately from the bill-of-lading (1) so that the provisions of the latter document are sufficient.

Finally, with regard to the question of demurrage, the « Notes » (page 12) do consider, quite rightly, that a uniform settlement is excluded. Charter-parties and bills-of-lading generally deal with that matter, and even when this is not the case, the decision rests with the laws, or even with the custums at the ports of loading or discharge. There is therefore no reason why these matters should be settled internationally; it must be left to the shipmasters, who have to load or to discharge in foreign ports, to take the necessary informations as to the customs of those places.

QUESTIONS OF DETAIL

In examining the various questions separately, I cannot strictly follow the order of the questionnaire. The questions 1 and 3 require a common answer, as, in both cases, we must deal with the distance freight and with the freight of the ship chartered to replace the first one. That is the reason, too why in the « notes », question 3 is dealt with in the second place.

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(1) For instance by stipulating the clause « an absolute lien on the cargo for any freight, dead-freight, demurrage and damage ». It is useless to consider the case where no bill-of-lading has been signed, as it is practically without any importance.

I. — Freight pro rata itineris

II — Of freight in case the vessel is declared unseaworthy

A. — *Freight pro rata itineris.*

According to German law (Code of Commerce §§ 630, 631) the contract of affreightment is cancelled always when the ship is lost accidentally after the begining of the voyage. However, provided the cargo has been transshipped or saved, the charterer owes freight up to the value saved and in proportion to the distance effected. For the calculation of *pro rata itineris* freight, not only the proportion of the distance effected, but also the proportion of loss of time and money, dangers and hardships relating to that part of the voyage effected as compared with those relating to the whole voyage. This is not in agreement with the provision of the German civil law as to the contract of labour, for according to the latter the contractor is responsible in case the execution of the work is impossible (Civil code, art. 644 (1) unless this non-execution is to be imputed to the co-contracting party (art 324) — in this latter case the contractor is entitled to the whole price as

(1) According to Roman law, the *conductor operis* is also liable for the result. On account of the principle forming a whole, undivisible thing, remuneration is only due to him for such work as is completed in conformity with the contract. It is only when the work to be done by him has not this character that he may claim for a partial execution of the task (if, in virtue of the contract, that part of the work may be considered as being an undertaking distinct from the other work) a proportional remuneration, even if the whole undertaking should not be completed, but without there bieng any blame against the « Conductor ». See to that effect, Goldschmidt, *Zeitschrift für das gesamte Handelsrecht*, 16, p. 362. See also Decision of the Higher Court of the Empire, 4, p. 178 and following. Re diverging opinions, compare with « *Motive zum Entwurf eines bürgerlichen Gesetzbuchs* », 2 p. 497.

stipulated — or merely to an indication given by the co-contracting party in view of the excution of the work (art. 645) — in which case the contractor is entitled to a partial remuneration and to have his expenses refunded.

To these provisions of the German maritime law correspond those of the three Scandinavian maritime legislations. (art. 160, 161) and those of the Finnish code (art. 102).

Save in the case provided for in article 234, paragraph 3, which is not under discussion here, the French law allows the *pro rata itineris* freight :

1) When, in the course of the voyage, the ship becomes irreparable and when the Master is unable to charter another ship to complete the voyage. (Code of Commerce, art. 296, paragraph 3);

2) if in case of shipwreck or loss of the ship, the cargo is saved or redeemed (art. 303) but not then with the limitation to the value of the effects saved. (Lyon-Caen and Renault. Traité de Droit Commercial, 3 edit., 5, page 557, note 3). In both cases the pro rata itineris freight is calculated mathematically on the distance effected as compared with the distance of the whole voyage.

The law of the Netherlands (art. 478, 483) and the Turkish Code (maritime code, art. 118, 125) follow the French law.

According to Italian law, distance freight is always due when in the course of the voyage, the ship has become irreparable, or when, in the case of the vessel being declared unseaworthy, the cargo is redeemed, or also when the ship is wrecked and the cargo saved. (See Pipia, Trattato di diritto marittimo, I, nr 1023).

Under Spanish, law, a proportional freight is due on the basis of the distance effected, outside of the two cases provided for by the French Code (art. 657 paragr. 4, 662) when the vessel calls, for urgent repairs, at a part of refuge,

and if in consequence thereof, the charterer cancels the contract and if the delay thus caused amounts to more than 30 days (art. 688, n[r] 5).

The Portuguese law (art. 548) allows a *pro rato itineris* freight always when in the course of the voyage, there occurs an obstacle of long duration which prevents the completion of the voyage.

As regards English law, it deals with the question on a very different point of view. In the first place, it considers the execution of the contract of affreightment as indivisible.

If the carrier does not bring the merchandise to the place of destination, he is not entitled to any freight, unless the ship was prevented to complete the voyage in consequence of the act or the fault of the charterer or of the owner of the goods. (Carver, Carriage of goods by Sea, 2[d] edition, sect. 554). Under Englisch law, therefore, there is no distance-freight. In practice, a freight *pro rata itineris peracti* is only allowed in case of formal or tacit agreement on this point. In the construction of the intentions of the parties, this tacit agreement has been very often admitted in cases where it seemed equitable to allow an indemnity to the carrier although the voyage agreed upon was not performed. (Carver, sect. 557 and follow. Leggett, Bills of lading, 2[d] edit, page 261 : Scrutton, Charter-parties and Bills-of-lading, 3[d] edit. Art. 143).

According to the law-practice in the United States of America, the lessor is bound to reforward the cargo by other ships from the spot where the voyage was interrupted ; if he cannot or if he will not do it, he has no right to any freight. If, to the contrary, he delivers the goods to the charterer at the place where the voyage is interrupted, and if there the charterer accepts them, the latter owes freight *pro rata itineris*. For the calculation of that freight, they consider the equity of each case. (Parsons, Law of Shipping, 1869, — 1, page 239 and following.)

Amongst the continental legislations, only Belgian law adoptes the principle of the English rule (Code of commerce, Book II, art. 97, paragr· 3): No freight is due for goods which shall not have reached their destination after the ship was lost or declared unseaworthy. (See on this point Jacobs. *Le. Droit Maritime Belge,*[1] I, page 423 and following.)

The contract of affreightment is a contract of labour; that which the contracter must perform is not as much the work itself, but rather the result. The consequence of this juridical definition of the contract is that it the contracter does not arrive at the result, he has no right to any remuneration. The English system, which does not allow distance freight, is therefore in the right on the point of view of legal logic.

Only reasons of equity may be urged in favor of a partial remuneration. But such arguments may not imply any injustice towards the other party. And this however is the case if one is to grant to the lessor a right to an indemnity for all cases where on account of whatever circumstance occurring during the voyage, it becomes impossible to complete same.

A carriage by land may in most cases, be considered as a partial execution, in this way that such partial execution represents, as towards the shipper, a partial result, as it constitutes, after all, a progress in the direction of the place of destination. For carriages by sea, this may also happen. Supposing, for instance, that goods are to be shipped from Genua to Bombay, via Port-Said. If, after her arival at Port-Said, the ship cannot continne her voyage, then at least a first stage has been reached and the goods may easily find another opportunity for reforwarding to their final destination. In such case, it is but

just to grant to the carrier an indemnity for this first part of the transport from Genoa to Port-Said, as representing a partial result obtained through him. But this is not the case, if a ship which having to carry a cargo from San-Francisco to Hamburgh, along the Western Coast of America, is wrecked near Cape Horn, and if her cargo is saved and landed on a rock lying out of the route of steamers. (1) In such case, and from the economical point of view, though there is partial execution, there is no partial result; for it is impossible to reforward the cargo unless with a considerable loss of money; and at the place itself it is in no way possible to sell the goods, their value is by no means increased in consequence of the partial carriage; to the contrary they have lost their value. It would therefore be the height of injustice to oblige the parties interested in the cargo, to pay any indemnity. As to the cases half-way between these two extremes, it will be always very easy to appreciate them.

Without taking into account the American practice, the true solution has already been pointed out by the commercial Law Congress held in 1888 at Brussels.

As early as 1885 the Antwerp Congress had concluded to the suppression of distance-freight (Actes du Congrès international de droit commercial d'Anvers, 1885, p. 214 and following, 418) in the case where the goods cannot be reforwarded by another ship. The Brussels Congress has preconised for the partial carriage, an indemnity *ex æquo et bono*, an « equity-freight ». (Actes du Congrès international de Droit commercial de Bruxelles de 1888, p. 358 and following, 417). Such solution would adapt itself to the special circumstances of each case.

(1) Compare de Courcy: D'une Réforme internationale du Droit Maritime, p. 74.

It answers at the same time to the question : which circumstances should be considered for calculating the « equity-freight » ? It shall not be the mathematical proportion between the distance effected and the whole voyage, admitted exclusively by French law, and which German law admits in the first place (« a system very easy, but also very defective », says de Courcy, loc. cit.) Nor shall it be the « average-proportion of time, expenses, dangers and hardships caused by the part of the voyage effected, as compared with those of the whole voyage » : as we have explained above the services rendered by the lessor must not be taken into account ; but only the result of these services for the parties interested on the cargo. Consequently we must only take into account the practical result arrived at by the cargo, and on this point, the only decisive question is in what proportion the party interested on cargo would be enriched if they had to pay nothing for the effected portion of the voyage. (Compare : Protokolle der Kommission zur Beratung eines allgemeinen deutschen Handelsgesetzbuches, page 2397). In some instances this would work out to a distance-freight mathematically calculated. But this would not always be the case. In the hypothesis we have first dealt with, (a voyage Genoa-Port-Said-Bombay) an « equity-freight » for the amount of the distance-freight Genoa-Port-Said should be allowed only as far as it would not he higher than he difference between the freights Genoa-Bombay and Port-Said-Bombay, as the party interested on cargo would be enriched with the amount of that difference (1). As for the question: for what

(1) Parsons, (page 243) says that freight should be paid, not for a geographical portion of the voyage, but for the part effected under a commercial point of view. « The simplest method of applying it would be for the shipper to pay the whole freight, deducting what would be the ordinary or usual cost of carrying the cargo from the port at which he received it, to that of its original destination ».

amount the shipper is enriched, in some cases, account should be taken of the increase of the value and of the possibility to sell the goods at the intermediate port where it parted with the ship. But there notice should be also taken of this further consideration that a merchant, who sends merchandise to foreign countries, may reasonably expect an increase of its value, outside of the increase which the freight represents in itself, so that every increase whatsoever of the value should not be absorbed by the « equity-freight ».

Finally, equity itself requires that the lessor should not obtain for the distance effected a higher sum than the ordinary freight for such distance, even if, on account of special circumstances, the profit earned by the party interested on cargo should turn out to be superior. *For the computation of « equity-freight », the rate of freight generally paid for the intermediate port should therefore be a maximum limit.*

B. *Freight of the replacing vessel.*

The question, for whose account the Master of a ship lost or declared unseaworthy, shall reforward the cargo to its destination by another vessel, is resolved differently by the various legislations.

1. Some codes, such as the Spanish law (art. 657), the Dutch law (art. 478, paragr. 3) the Turkish law (art. 118) oblige the Master to effect the reforwarding for charterer's account : it is only when, notwithstanding his efforts, the Master does not succeed to find another ship, that distance-freight is due for the portion of the voyage effected.

The French law (Code of Commerce, art. 296, paragr. 2, 3) reads : « In case the ship could not be repaired, the Master is bound to hire another vessel ; if the Master could not do so, freight is only due in proportion of the

state of advancement of the voyage ». It appears that these provisions must be constructed in the same way, viz that in the case of paragraph 2, the lessor receives the whole freight, but must take the necessary measures for reforwarding the goods, whilst in the case of paragraph 3, the obligation to reforward falls away and consequently only a *pro rata itineris* freight is due. But nearly all the French writers construct the law in the other sense. (See further, sub. 2.)

2. Another category of legislations oblige the Master to reforward the cargo by another vessel for the cargo-owner's account, if, under the special circumstances of each case, such measure is the best suited to their interests; so for instance the German law, (Art. 632), the Scandinavian Maritime laws (art. 160, 57) the maritime law of Finland (art. 103) and Italian law (art. 514, 570, paragr. 3. (See on this subject Vidari, Il nuovo Codice di Commercio, on article 570).

Also the French law (see above, sub Nr I) (1) is generally constructed as meaning that the reforwarding must be effected for charterer's account ; (2) that at least when distance-freight and the freight of the replacing vessel, added up together, are superior to the freight stipulated in

(1) Article 296 deals with the position of a replacing vessel only in the case where the first ship becomes unseaworthy. The same principles must apply when the first ship was wrecked or captured : Lyon-Caen and Renault, Traité 5, nr 772.

(2) Lyon-Caen and Renault, Traité 5, nr 674 : « Here, the law consides the Master as being less the representative of the lessor than the representative of the charterers, consequently bound to take such measures as are most in conformity with their interests... ». — nr 678 : « If the Master is bound to charter another ship, it is in his capacity of representative of the charterers. » — Compare also Desjardin, Traité de Droit commercial maritime, 3, nr 795 ; Pardessus, Cours de droit commercial, 2, nr 715.

the contract, the excess must refunded by the charterer to the lessor.

But there is still a controversy as to the question whether, if in the contrary case, when the freight of the replacing ship is inferior to the freight of the contract less distance-freight, the charterer shall notwithstanding be bound to pay the whole freight, or whether the difference shall be credited to him. Bedarride (Du Commerce Maritime, 2d edit. Nr 773) Dalloz (Répertoire de jurisprudence, s. v. Droit Maritime, nr 580) Lyon Caen and Renault (Precis de Droit Maritime n. 1873 ; Traité 8, nr 679) advocate the first solution, whilst the second solution is defended by Desjardins (Traité de Droit Commercial Maritime, nr 795) Cresp et Laurin (Cours de droit maritime, 2d edit. page 114), de Valroger (Droit Marime, nr 829) and Alauzet (Commentaire, nr 1271). As to the cases considered separately, see Lyon-Caen and Renault, Traité 5, nr 676 and following.

To French law corresponds the Belgian Code (art. 94, 97 : see on this subject Jacobs I, nr 390 and following); the only diffrence is that the Belgian law does not acknowledge distance freight. Article 97, to which article 94 refers, (as to this, see Jacobs, I, page 415) makes a distinction between three cases : that where the freight of the replacing ship is lower than the rate of the contract ; that where these rates are equal and finally that where the freigt of the replacing vessel is superior to the contract rate : in both the first cases, the Master is entitled to the freight stipulated in the contract, and in the latter case he has also a right to the amount in excess.

The Brussels Commercial law Congress (Actes, page 417) has arrived to the same result.

In American law practice, they stick to the rule : that the Master must transship, if possible, and in that case he may charge against the cargo-owners the amount of transship-

ping expenses which exceed his freight. (Parsons, I, p. 235 and following.)

3. According to British law, the Master is not bound, but he is at liberty to reforward by another vessel the goods which he cannot carry to destination, by means of his own ship. Il the goods reach their destination he is entitled to claim the whole freight, even if the freight of the replacing ship should be lower (Carver, Sect. 304; Abbott, 13th edit. pages 411, 414 and following.)

4. Finally, according to Russian law. if the ship suffers damage in the course of her voyage, and cannot on that account continue her voyage in due time for allowing the cargo to reach its destination so as to cause no loss to its owner, the Master may (he is not « forbidden » to do so) charter for the transport another ship, the freight of which shall be paid as follows : two thirds by the lessor, and one third by the owner of the cargo.

The solution adopted by the French and the German law seems to be the best suited to the practical necessities of commeree and more in conformity with legal logic.

When the ship is lost, or when she cannot continue her voyage, the contract of affreightment falls in consequence of the fact that the lessor is unable to execute his obligations.

With this system, one may conciliate the principle that beyond the duration of the contract the Master shall be bound to take measures of precaution — which includes in some cases the duty to reforward the cargo for account of its owner, — but one cannot conceive that the lessor could be compelled to effect this reforwarding for his own account.

If starting from that principle, the party interested on the

cargo would have to pay, outside of the « equity freight » (see above) for the carriage of the goods up to the place where the voyage was interrupted, the new freight up to destination, without taking in consideration whether these two ancounts are higher equal to or lower than the freight as per contract.

For practical reasons, it should be further left to the option of the lessor to undertake the reforwarding at the rate of the contract, provided he abandons any claim to « equity-freight ». This might prove advantageous for the lessor, namely in the case where a line has several ships running on the same route and that the following ship calls at the same spot where the voyage of the former was interrupted. If the lessor avails himself of this option, the party interested on cargo has only one shipowner to deel with, and this would in the first place, avoid complicated accounts ; in some cases, he may perhaps pay a little more, but on the other hand, he has the chance to have no freight at all to pay when the goods are lost during the second part of the voyage, whilst in the former case, he would at all events have to pay the « equity freight » due for the carriage of the goods up to the spot where the voyage is interrupted.

Practically, this would lead to re-establishing the solution of French law.

III. — **Of freight in case the cargo is sold.**

The continental legislations practically agree as to the solution of this question.

1st question. — According to German law, the Master may sell part of the cargo only as far as this be necessary to continue the voyage. (Art. 538) : and he may only have recourse to such last measure when he cannot by any other means face the contingency, or when such other means

would involve for the shipowner a loss which should be out of proportion (Art. 540). In the cases provided for by article 540, the sale of part of the cargo is considered as a loan contracted in the shipowner's name (Art. 541); and according to article 611, the shipowner is bound to repay it (Art. 612). The consequence is that he is entitled to the whole freight (Boyens, Seerecht, 2, p. 258). However if the sale of part of the cargo constitutes a general average sacrifice, (Art. 539 : compare Art. 706, N° 7) no freight is due (§§ 618, par. 2, 715) : but then the freighter (shipowner) is entitled to an indemnity for the freight which he has thus « lost ».

The Scandinavian maritime laws grant to the Master, when he is not at the home-port, the power to sell part of the cargo so as to be enabled to complete the voyage, and this for the shipowner's account (§§ 48, 49) so that this latter is bound to refund it (§ 149). But as such claim for compensation replaces the goods themselves, the provision of § 151 viz that no freight is due for goods which are not on board at the end of the voyage, cannot apply in this instance.

French law (Art. 298) as well as the code of Italy (Art. 575), of Belgium (Art. 93), of the Netherlands (Art. 480), of Spain (Art. 659(, of Portugal (Art. 555, § 2), of Turkey (Art. 120), of Russia (§ 399) provide the obligation to pay freight for the goods sold for the ship's requirements. This provision also extends, according to the French law and such other legislations as follow the latter, to the case where the sale of part of the cargo was caused by a general average. (Lyon-Caen et Renault, Traité 5, N° 776, B. b.)

According to these several legislations freight is due; the Dutch, Spanish and Turkish laws only provide that if the ship is lost subsequently, only a distance freight is to be paid, according to the distance effected.

Question 2, A and B.

In both cases, the Master effects the sale as representative of the parties interested on cargo : the result thereof is that the whole freight is due. This, German jurisprudence admits; (High Court of Appeal Lubeck, by Kierulff 6, N° 57; Decisions of the High Court of the Empire 25, p. 10 & foll.; Decisions of the Imperial Tribunal in matters of civil law, 13, p. 123; 14, p. 37) whilst the Scandinavian legislations (§ 151) and the Portuguese code (Art. 555, § 1) provide that formally.

In French law, it results from the provisions of article 293 (1), seeing that « to sell » is practically to « withdraw the goods during the voyage »; the same is the case in Belgian law (Art. 89; Compare Jacobs I : page 398), in Italian law (Art. 567) and in Spanish law (Art. 684). As to the law of Portugal, it deducts from this freight the expenses which were saved.

In opposition with the Continental legislations, English law holds that (safe in case where the contrary is agreed by contract or where the charterer is in fault), freight is only due when the cargo is delivered, at the port of destination, to the consignee. Consequently, no freight can be claimed when goods are sold in the course of the voyage, whether this sale has been effected for the sake of the ship or on behalf of the charterers. (Carver, sect. 307; Scrutton, Art. 136; Leggett, page 272).

The settlement of this question such as it contained in the continental laws, seems more equitable and more practical.

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(1) « The Charterer who withdraws his goods during the voyage, is bound to pay the whole freight...... ».

As regards question I, we may say that, under English law, the shipowner, the Master of whose ship has sold part of his cargo for the necessaries of the ship, is bound fully to pay damages therefor (Hopper v. Burness, in Carver, sect. 561 ; Maclachlan, 4th edit. page 160) : if at the port of destination the charterer receives the amount of this indemnity « pretium succedens in locum rei », he would see his wealth increased unjustly if he had not to pay any freight.

With regard to the cases 2 A and B, when parties interested on cargo, or their representative, the Master, withdraw their goods from the voyage for their own benefit only, it would be contrary to any principle of equity to put the loss on the shoulders of the carrier who is ready to carry out completely the contract of carriage.

If, under such conditions, no right to the freight is given, the consequence will be that the Master (who in case of conflict between the interests of the charterers and those of his owners, must first of all protect these latter — compare : Decisions of the Civil Law Court, 14, page 40; 15, p. 159 and following) — shall find a reason to let damaged goods be completely spoiled, rather than to sell them on behalf of the parties interested on cargo ; seeing that in the first case, as he would deliver the goods at destination he would be entitled to receive the freight, whilst in the second case, nothing would be due to him.

From all this the result is that the continental symtem ought to be preferred rather than the British system. As to the distinction drawn by German law, viz : whether there be a case of general average or not — it is not justified sufficiently, seeing that in stead of the goods sacrified, there remains the right to an indemnity (See Jacobs, I, nº 396 ; Lyon-Caen and Renault, Traité 5, nº 776 B.

When goods are sold, there is, on the one hand, the

regress of the charterers against the carrier — entitling them in the first case to an indemnity, in the second case to the delivery of the produce of the sale — ; on the other hand, there is the Charterers' obligation to pay the freight. Neither is there any reason to reduce to a proportional fraction the right to receive the freight in case of subsequent loss of the ship, as is provided by the laws of the Netherlands, Spain and Turkey in the instance under nr I.

The deduction of the expenses saved, as it is allowed by the code of Portugal, is right, as a matter of principle; but as a matter of practice, it is of so slight importance that it seems better to drop it altogether, in order to avoid difficulties.

IV. — **Half-freight and dead-freight.**

As to this matter, a great majority of the continental legislations adopt unanimous principles which are in direct contradiction with the principles of English law, and also, at least for a part, with those of the Russian legislation.

When the charterer breaks the voyage before its commencement, or before the loading commenced, or before the delay of demurrage commenced running (on the latter point, the various legislations diverge) the continental legislations give to the shipowner the right to claim half the freight : this is the case in Germany (§ 580 ; Modification for part-charters or for lots of micellaneous cargoes) in the Scandinavian States (§ 126, par. 1) in France (art. 288), in Italy (art. 564), in Belgium (art. 75), in Spain (art. 688, 685), in Portugal (art. 553), in the Netherlands (art. 484, 467 : in the case provided by article 464, there is an alternative to take other regresses) ; in Turkey (art. 108, 113 : in the case provided for in art. 108, there is an alternative of contractual penalty, or of damages to be assessed by experts). As for the result, it matters not

much that some legislations give to the charterer the option to cancel the contract, so that dead-freight becomes an indemnity for cancelment fixed by law, whilst other codes consider that there is in such cases a breach of contract, for which the amount of damages is fixed by law.

Further, according to the continental legislations, the charterer who does not supply the total quantity he contracted for, is bound to pay the whole freight (dead freight). This is the case in Germany (§§ 578, 579) in Scandinavia (§ 126. par. 2, 130) in France (art. 287, 288), in Belgium (art. 72, 75), in Italy (art 563, 564), in the Netherlands (art. 465, 464), in Spain (art. 680), in Portugal (art. 353), in Russia (art. 402), in Finland (art. 96), in Turkey (art. 107, 108). There is only divergency on the following points :

a. That some legislations give to the freighter the option to claim cancelment of the contract with damages (Netherlands, Turkey, compare also Finland) ;

b. That most of the legislations allow the freighter either with the consent of the charterer (like France, Belgium, Italy, Portugal, Finland, Turkey) or without this agreement (Scandinavia, Spain, Netherlands) to take other merchandise instead ; the freight of such merchandise (or, according to the scandinavian codes : half the freight) must profit to the charterer, as well as the expenses saved.

British law is in quite another direction, and does not allow either half-freight or dead-freight in the sense mentioned above. The charterer who does not supply his cargo, or does not supply the whole of the cargo contracted for, is liable for damages, the amount of which is not fixed by law, but which is determined by the Court according to all the circumstances of each special case, unless there be some special provisions in the contract (Maclachlan,

p. 472; Carver, sect. 711 and fol., 666; Scrutton, art. 160, 161; Abbott, page 547, 553). In the first case they are « damages for failure to load under charter »; in the second case, they are called dead-freight; (1) this last expression is only used in most cases to describe the contractual indemnity for non supply of the whole cargo (Scrutton, art. 161, note).

The « Penalty Clause » which is inserted in most of the contracts (« penalty for non-performance estimated amount freight » or other similar clauses) is at present considered has having no value whatever as a penal clause. (Carver, sect. 277; Maclachlan, page 405). But on the other hand it is open to parties to stipulate aforehand in the contract their interest in the performance of the agreement (« liquidated damages »). As to the question whether parties did mean to stipulate a « penalty » or « liquidated damages », this must result from the circumstances of the case, the expression used, « penalty » or « indemnity », carrying no decisive weight in itself as to this.

(On this subject, see the Jurisprudence recorded by Foard, on page 456 of his Law of Merchant Shipping and Freight; compare Decisions of the Tribunal of the Empire in matters of Civil law, 39, p. 69).

The fixation in the contract of the dead-freight takes place according to the amount in tons not shipped con-

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(1) Parsons, I, page 289, refers to American practice : « For if he (the charterer) hires the whole burden of the whole ship by any words which express or imply that he is to fill her and pay for all she carries, then if he fails to provide a full cargo, he is liable as if a whole cargo had been provided ». According to the foregoing quotation, American practice thus follows the Continental system of *dead-freight*. Parsons (page 292) describes « dead-freight » as being « that part of the freight-money which is paid for the space or burden that in unoccupied ».

trary to the Charter-party (« for each ton short-shipped » : Carver, sect. 722 ; Scrutton, Art. 167).

Russian law also does not acknowledge the half-freight. It is open to parties to fix a penalty in case the charterer withdraws from the Contract (§ 378) : for the charterer of a ship, this penalty may not exceed the amount of the freight or the fine (penalty) stipulated in the Contract (§ 379).

At the head of these remarks, we have already shown that those questions of half-freight and dead-freight do not necessarily require an international settlement. But if such agreement should be arrived at, it seems to me that the adoption of the Continental system should be recommended, for reasons of practical character.

1. *Half-freight.* — The actual damage caused to the shipowner will consist in most cases, of the net freight, deduction being made of the freight cashed for merchandise eventually taken instead. Therefore the question of law which first arises is whether the shipowner is bound to try to obtain other cargo to replace that which is not supplied. (Scrutton, art. 160. Note 2) and if so, then rises this question of fact : could he find other cargo ? It is with a view to make away with similar controversies, and to avoid similar questions of evidence that it might be useful to have the half-freight fixed by the law. Between the « liquidated damages » of British law, and such indemnity legally fixed to a lump sum, there is but one step. To fix such indemnity to one half of the freight provided by the contract, seems equitable as far as the interests of both parties are concerned : on one side, the charterer is protected against claims of indemnity to an unlimited extent,

whilst on the other hand, the shipowner may dispose of his vessel as he deems fit.

2. *Dead-freight.* — It would not be equitable to give to the shipowner, who has not received the whole of the cargo contracted for, a claim for indemnity in every case, without distinction and without considering whether the default of supplying the balance is due to a fault or not. But, as the shipowner was obliged to have his vessel in readiness to receive the whole cargo engaged, it would be more fair to grant him a claim for a due consideration, as is the case for the various continental legislations and also for British practice. On this head, the dead-freight indemnity is justified. The settlement of the various interests would be perfect if, according to French law, the shipowner was allowed (but without being obliged to do so) to take, in agreement with the charterer, other cargo instead, provided that the freight relating to such « replacing cargo » would be credited to the charterer.

V. — Delay in loading and discharging.

There is a controversy with regard to the judicial character of demurrage.

In Germany, they have abandoned the old theories which pronounced demurrage as being damages or a contractual penalty ; generally demurrage is considered now as an indemnity for the protracted detention of the ship, consequently as representing the hire-price of the vessel. (Decisions of the High Court of the Empire 19, page 93 and following ; High Hanseatic Court, in the Hanseatischen Gerichtszeitung, Chapt. 1890, nr 93, 1906, nr 18 and in the Revue Internationale du Droit Maritime, 15, pages 181 and following ; Court of the Empire, in « Seufferts Archiv 48, nr 200 ; Mittelstein, Zeitschrift für

das gesamte Handelsrecht, 40, page 37 and foll.; Boyens, 2, p. 133; Schaps, Das Deutsche Seerecht, Remark II to § 567). Consequently the right to demurrage does not imply either a fault (negligence) or a delay in the reception; it is allowed even when the shipowner has suffered no loss; the fact to make use of the whole of the delay fixed for demurrage is neither a contravention nor a breach of the contract; but it constitutes a right on the side of the charterer or the receiver; the latter are therefore not liable, as towards the owner, for the loss he suffers by employing the whole delay provided for demurrage. (1)

Under English law, too, « demurrage is, strictly speaking, an indemnity for « additional days » which are allowed, either expressly or by silent consent, to the charterer or to the receiver, outside of the delay provided by the contract for the loading and discharging (Carver sect. 609; Scrutton, Art. 54; Abbott, page 243, 244) (2).

In French doctrine and French practice, the controversy — viz : the question whether demurrage is to be considered as « damages » or as an accessory to the freight, an additional hire-price of the vessel — has been solved almost generally in the latter sense (Lyon-Caen and Renault, Traité, N° 797 and the decisions quoted; further : Tribunal of Commerce of La Seine, in the Revue du Droit Maritime 12, p. 703 and follow; p. 354).

But Belgian Jurisprudence is in the other sense (Jacobs 1, n° 301, 403). It also requires — in order that a claim for demurrage be admissible, — that a protest have been

(1) In the opposite sense. » demurrage » is considered in practice as an indemnity which third parties have to pay to the owner for any delay which they have caused through their negligence in the trading of the ship. But those are not the « demurrage » which we mean here.

(2) The expression « demurrage » is also employed here, but improperly, instead of « damages for detention of the ship ».

made, even when the dalay for loading or discharging is fixed in the contract. (Jacobs I, p. 331).

As I stated before, it seems that this question does not require to be settled internationally. The question whether there is any right to demurrage, must depend on the law of the port of loading, or eventually of the port of discharge, — in virtue of the principle of law « locus regit actum ». (Comp. Lyon-Caen and Renault, Traité 5, n° 851; High Hanseatic Court, in the Hanseatische Gerichtszeitung, chapter 1889, n° 103, 119; Court of the Empire at Hamburg, 1892, n° 47). It may happen, it is true, that it is not the court of the place where the claim originated before which same is to be tried, for instance when, according to the Bill-of-lading, demurrage incurred during the loading, is to be recovered against the consignee; it is also possible that the Court before which the action is tried, dismisses same on account of same provisions of the *lex fori* not having been complied with. (Compare « Notes », p. 15); but such special cases do not justify the necessity of unifying the legislations as to demurrage.

To remedy to these inconveniences, one could at the most recommend a convention of private international law, to the effect that the law of the port of loading shall always rule all judicial connections relating to the loading of the vessel; and that everything relating to the discharge of the ship, shall be settled according to the law of the port of discharge.

NETHERLANDS

ASSOCIATION OF MARITIME LAW OF THE NETHERLANDS

SUB-COMMITTEE
composed of Messrs B. C. J. Loder, W. L. P A. Molengraaff,
A. C. Visser van IJzendoorn, C. D. Asser, Reporter.

REPORT

containing the answers to the Questionnaire on Freight

A. — « **On which points should conflicts of Law as to Freight be settled internationally ?** (1).

The Bureau of the International Maritime Committee, when putting this question has understood quite rightly that the contract of affreightment could not as yet be the object, in all its parts, of a uniform international agreement.

Then the necessity of such international settlement is not as obvious as it was with regard to the matters of collision and salvage which have been framed into two codes more or less complete, prepared discussed and drafted by the former conferences of the International Maritime Committee.

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(1) We beg to observe that the wording of this question does not seem to us to be quite right. There can be no question to settle conflicts of law, this being a matter for international private law in the restricted sense, but rather to make away with such conflicts by the adoption of certain uniform rules.

There, it concerned liabilities arising out of the law, whilst in the present matter, we deal only with a relation deriving out of a contract and which for the greatest part can be regulated by the parties themselves in the way they wish it, as is clearly proved by the many existing forms of charter-parties with their various provisions and clauses.

Therefore, to begin with, we will only have to establish some principles of such nature as can be incorporated in the various national legislations and which will regulate the charter contract, at least as far as the parties themselves have not provided otherwise, and, is some cases, even notwithstanding any contrary clauses.

It is beyond discussion that in the matter under consideration, the questions relating to the *payment of the freight,* are the most important.

However, before dealing with them, we deem it fit to make first a general remark.

When one considers the nature of the Carriage by sea such as it exists nowadays, with all the changes it has undergone during the second half of the last century, one must own that in several cases, the old rules, which are still at the basis of most of the existing European codes, cannot be applied or adapted to the new institutions.

We refer in the first place to time-charters and other contracts where the payment made to the shipowner for the use of his vessel, is quite independent from the carriage of goods.

Under such contract, where freight is represented by a fixed lump sum, in most cases according to the length of the contract, there can, for instance, be no question of freight pro rata itineris, or dead freight, or demurrage.

We do not mean to say that such contracts should not deserve the care of the legislator.

To the contrary, we are convinced that the often very thorny problems which they involve, require to be solved by law, and if possible, such solution ought to be uniform; such is the case, for instance, for the question whether under a « time-charter » the shipowner should be liable for all consequences resulting from the carriage of goods, from a collision &c.

But, our aim is to point out that the various questions put by the International Maritime Committee, can only apply to the contract of affreightment such as it is described in the existing legislations, and in answering those questions, we have put aside all modifications and changes which are involved by the requirements of modern navigation.

Further, it seems to us that the carriage of goods, such as it is effected by regular liners, is of a character too special so that the principles of the contract of affreightment cannot apply entirely to same.

Indeed, in such case there is a contract under which the Company binds herself to carry goods from one place to another, but where the name of the vessel taking the goods actually on board, has no importance whatever. It is almost useless to add that in such cases, there is no charter party, and that nowadays, this applies practically to all cases where general cargo is concerned. Generally, the bills-of-lading of such Company contain a clause stating that the Company reserve the option to ship the goods by another vessel than that named in the Bill-of-ladig, whilst on the other hand, it even very often occurs that no vessel at all is named. Finally, we should not forget that several Companies running regular lines, require that freight be prepaid, at any event.

We also alluded to « through-bills-of-lading » which include carriage by land or on « inland waters » previously

to the shipping of the goods on board a sea-going vessel, or afterwards — which from a judicial point of view threaten to create difficulties almost insuperable.

De jure constituendo we are of opinion that all these contracts the character of which so widely differs from the ordinary contract of affreightment, should be submitted to special rules.

Having thus limited the scope of our study, we are now going to consider the questions unumerated sub.

B. — «**What are, in each case, the best solutions » to be recommended?**

I. — Freight pro rata itineris.

« **Is any freight due when the vessel is lost during » the voyage but the cargo saved wholly or partly? » In what proportion, and on which basis? »**

The legislations and the practice now existing, follow systems more or less different.

The code of Commerce of the Netherlands draws a distinction between the following cases :

a. Loss of goods through shipwreck, stranding, or another force majeure, the act of pirates or enemies : *no freight is due.*

b. Jettison of goods for the common safety : *the whole* freight is due, against general average contribution when the latter must take place according to the provisions of the Code of commerce.

c. Redemption of goods, or salvage of same by the Master : freight is then due up to the place where the goods were arrested and for salvage in accordance with the distance effected, if the voyage cannot be continued ;

the whole freight is due when the goods are carried by the Master to the place of their destination.

d. Salvage of the goods at sea or on shore without cooperation of the Master : in such case, no freight is due at all.

Nearly the same rules have been adopted by the French code of commerce and by the Belgian law of 21st August 1879, exception being made for the case under *d* which is not to be found in either of the latter legislations.

According to German law, the contract of affreightment ceases to exist in case of shipwreck, although the Master is entitled to a pro rate itineris freight for the goods salved; however such freight must never exceed the value of the goods salved. For the calculation of that freight, not only the distance effected must be taken into account but also the expenses, the duration and the dangers of the voyage effected, as compared with the whole of the voyage. However, the cessation of the contract of affreightment does not free the Master from his obligation to have the goods carried up tot heir destination by another ship, if possible, or is sell them, in both cases for charterer's account.

As to British law, it is essentially different from Continental law.

As a rule, British practice does not grant to the Master any action to obtain payment of freight, when the goods do not reach their destination. In all cases where the Court allowed a freight pro rata itineris, the reason of such decision was that, *in fact* there had been a new contract between the Master and the charterer, either actually concluded, or presumed as resulting from their acts ; for instance when the charterer caused the goods salved to be delivered to him at another port than the port of destination. In such case, the British judges admitted that a

freight pro rate itineris was due in virtue of such *new contract* which had replaced the first one.

Of these three systems, the British one seems to us the most logical and the most equitable.

Indeed, this is a synallagmatic contract which, as to the principle, does not differ from other contracts of that nature.

The owner or the Master bind themselves to carry goods to their destination; in consideration of such carriage of goods, the charterer has to pay the freight agreed upon.

Now, if one of the contracting parties does not fulfil his obligation, then, as a rule, the other party must also be freed from any liability.

We do not see any sufficient reason why the charterer should be bound to pay any portion of the freight.

. It is true that the shipowner may have had disbursments, even for a considerable amount; that he has run some risks for which he will receive no compensation.

But such is also the case for all other synallagmatic contracts, when one of the contracting parties is prevented from discharging his liabilities, even owing to an accident; for instance, in the case of a sale of goods determined *in genere* coming from a distant country, or which have been manufactured at great expenses, and which should perish before having been delivered to the buyer.

Neither could it be sustained that the charterer has earned anything by the carriage of his goods to another spot than the port of destination; it may, to the contrary occur that at such spot, the goods in question would represent a lower value than at the port, from which they were shipped.

Finally, the way in which the freight pro rata itineris is calculated, is always more or less arbitrary, even if we

take into consideration the various points enumerated by the German code.

We are therefore of opinion that, as a uniform principle of law, it will be necessary to suppress the pro rata itineris freight and to deny to the Master any right to his freight when, owing to shipwreck or to another fortuitous accident, the goods do not reach their destination, exception being made however in the case where the charterer reçeives, by way of contribution to General Average, the whole value of the goods lost as calculated on the port of destination (1).

II. — Of Freight, in case the cargo is sold.

« Is any freight due for goods sold during the voyage ? »

a. For the needs of the vessel.

We beg to remark first that this question has but little practical interest, seeing that, with the modern rapid means of communication, it will only occur very seldom that the master must resort to a sale of goods in order to provide the money necessary to repair his ship.

If, however, such sale has taken place and when the Charterer has been repaid, either by the shipowner or by way of General Average contribution, the entire value of the goods at the port of their destination, — then the whole freight shall be due.

But, if the value of the goods has been only refunded to the charterer, after deduction of freight and other expenses, no freight shall be due by the Charterer, while the.

(1) The Maritime Law Association of the Netherlands, in its general meeting, also adopted this view.

owner shall have the option to claim same by way of General Average contribution (1).

b. In consequence of their damaged state,
if owing to an inherent vice;
if owing to accident.

Dutch jurisprudence has admitted that the Master, when selling cargo owing to its damaged condition, whatever may be the cause of same, has acted as a « negotiorum gestor » of the Charterer; that consequently, the latter must be considered as having withdrawn his goods and that he was therefore to pay the whole freight and the General average contribution.

As regards the « jus constituendum », the members of our Commission could not agree.

Half of the members declared in favor of that system; they therefore did not see why a distinction should be made as to the causes of the damaged condition, as long as the sale has been made solely for the sake of the cargo only. However, in the case where the goods sold have been replaced by other cargo, the freight relating to the latter must be deducted from the amount due by Charterer to the shipowner.

The other half of our Commission decided in favour of the English system, according to which no freight is due, whilst the owner is intitled to the whole freight of the goods having replaced the cargo sold (2).

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(1) The Mar. Law Association of the Netherlands has adopted this opinion.

(2) The Dutch Association of Mar. Law, in its general meeting, has decided in favour of the system according to which the whole freight should be due.

III. — Of Freight, in case the vessel is declared unseaworthy.

« Is any freight due when the vessel is declared » unseaworthy at the port of refuge, or cannot » complete the voyage but when the cargo is refor» warded by another vessel and reaches its desti» nation ? On what basis and in what proportions ?

The code of Commerce of the Netherlands provides that in the case where the ship cannot be repaired, the contract of affreightment is not becoming void, but that the Master is bound to hire one or more vessels for his own account, and without having the right to claim an additional freight, in order to carry the goods to their destination. And only when the Master could not hire another vessel on the spot or at a neighbouring port, his liability ceases, when he has only a claim to a pro rata itineris freight.

This system is nearly the same as that of the French code.

According to German law, the charter-contract is considered as being at an end, but the Master is notwithstanding bound to take the necessary measures in order to have the goods reforwarded to their destination at the charterer's costs.

Our commission recommends to give to the Master a *right of option,* viz to allow him to consider the contract as coming to an end, without receiving any freight, or to reforward the cargo for his own account, in which case he may claim from the Charterer the freight agreed upon.

IV. — Question of half-freight and dead-freight.

« In the case where the charterer cancels the » voyage before loading, or loads only part of the en- » gaged cargo, shall the indemnity due (half freight » or dead-freigt) be fixed legislatively, or should the » question be referred to the common law as to » damages ? »

It is generally admitted that in the cases referred to in this question, the shipowner is entitled to an indemnity.

As to the way in which such indemnity should be determined, we do not think that a uniform settlement of that question be an absolute necessity.

If we were to chose between the two systems we would prefer the latter one, wich is the system of the English law, according to which the Master is only entitled to an indemnity corresponding to the loss actually suffered by reason of the non supply of the cargo.

Such damage ought to be calculated by taking as a basis the freight as per contract, under deduction of the expenses and of the freight which the Master earned by taking in another cargo.

It could even be required that the Master takes the necessary mesures to limit the damage as far as possible, and to try to replace te goods not supplied by other cargo.

V. — Delay in loading and discharging.

« Shall demurrage be considered as an additional » freight, or as an indemnity ?

» Will the debition of same be subordinated to a » written protest, at least by correspondence ? »

Although we prefer to let alone the controversy whether demurrage must be considered as an additional freight or as in indemnity, and considering the question only from the point of view of practice, we think that in an international agreement, we should recongnize the right of the Master to get rid of the cargo in case the Consignee does not receive same with reasonable speed, seeing that thereby general demurrage would no more exist in fact, and there will be only left the demurrage as per contract.

a. As to this latter demurrage, we are of opinion that the protest, mentioned in paragraph 2nd of the question, should not be required ;

b. That demurrage shall be due, even when the delay in loading or discharging should be owing to a fortuitous accident or to a « force majeure ».

c. That there should be admitted the general principle that in the case where there are several shippers or several consignees, they would be jointly and severally liable for the demurrage as towards the shipowner, they having the right to take their remedy against those amongst them who will have actually caused the detention of the vessel.

In all cases where the Captain in virtue of an agreement between parties, is bound to await the expiration of the lay-days, it is quite evident that the consignee is liable for the damages or losses caused by the detention of the vessel.

We do not see any inconvenience why the principles mentioned above under *a* and *c* should not be applied to this latter liability. (1)

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(1) The Associations of the Netherlands, in their general meeting, adopted the system of the Sub-Committee as regards the delay caused by an accident, or by a force majeure.

But they rejected the opinion of the Sub-Committee as to the joint liability of all consignees.

In the foregoing lines, we have briefly summarized our opinion as to the questions put by the International Maritime Committee.

We repeat that there still remain many other questions relating to the contract of carriage, which are interesting enough to deserve a careful study; such are, for instance, outside of the above points, the questions relative to the form of charter-parties, abandonment of cargo in payment of freight; the liabilities of the charterer in case the merchandise shipped are not taken by the consignee, &c. As to these latter questions, we beg to move that they may be inscribed on the agenda-paper of the subsequent Conferences, in order that we may succeed to adopt a uniform draft of law which would make away whith the most striking divergencies of the national legislations, on one hand, and which would adapt those legislations to the requirements of modern navigation and commerce.

SWEDEN

SWEDISH ASSOCIATION OF MARITIME LAW

REPORT

on Conflicts of law as to Freight

A. — The questions relating to Freight, arising between parting having concluded a charter-party must not necessarily be the subject of an international convention, as other points of maritime law. Indeed, in most cases, in order to solve them, it is sufficient to resort to the contract itself and to the existing legislations. But for questions of General Average and other similar, third parties may have an interest on Freight and therefore, from the point of view of international trade, it would be very important to have uniform international provisions as to freight. For these reasons our Association is of opinion that it would be desirable to arrive at an international agreement as regards Freight, especially on the questions put forward by the International Maritime Committee.

B. — As to the best way to solve the special questions, the Swedish Associations simply refers to Swedish law. At such places where our Association diverges from same, a special mention is made.

I. — Freight pro rata itineris

According to article 160 of the Swedish Maritime law, freight is due by the cargo, even if the ship is lost in the course of the voyage.

In such case, freight is calculated according to the distance effected and in proportion the the whole voyage as described by the charter-party; account should however be taken of the time required for the voyage, the special difficulties and the expenses relating to the distance effected, as compared with the whole voyage.

At need, the Swedish Association could agree to suppress the right to freight pro rata itineris.

II. — Of freight in case of sale of the cargo.

a) When cargo is sold in the course of the voyage for the sake of the ship, no freight is due (Art. 151 of the Maritime law of Sweden);

b) When goods are sold on account of their damaged condition, for account of their owner, freight is always due.

In such cases, the amount of freight is to be calculated: pro rata itineris (see above) if the charter-party has ceased to be in force, in virtue of articles 160, 161 or 164 of the maritime law of Sweden; but in the other cases, it shall be the entire amount of freight stipulated.

III. — Freight in case the vessel is declared unseaworthy

In such case, the Swedish code disposes that freight shall be due pro rata itineris.

IV. — Half-freight and death-freight

The amount is fixed by law; this is necessary seeing that common law as to damages in Sweden is rather defective.

V. — Delay in loading or discharging.

Demurrage is considered as being an indemnity, the amount of which is fixed by law, if the charter-party does not contain any special clauses on this subject.

It order that same should be due, no written protest is required. There is however an exception to this rule for demurrage incurred at the port of loading : the latter must be mentioned upon the bill-of-lading in order to be recoverable against the holder of the bill-of-lading, as such.

In conclusion, the Swedish Association is of opinion that international rules as to Freight are desirable for vessels navigating on time-charter.

Extract from the Maritime Law of Sweden

Art. 160. — When a vessel is lost is the course of the voyage or is declared as being a total loss, the charter-party shall cease its effects. It shall however be encumbent on the Captain to take, for account of the owners of the cargo, such measures as provided by article 57.

In such case, freight shall be calculated in proportion to the distance effected as compared with the whole voyage described in the charter-party ; account shall however be taken of the time necessary for the part of the voyage which has been effected and of the special difficulties and expenses relating to same, as compared with those of the complete voyage (Distance-freight).

If parties cannot agree as to the Freight due, the amount of same shall be fixed by arbitration.

The owner of the cargo shall have the option to abandon such part of the cargo as remains of same, instead of freight.

Art. 161.— In case of occurrence of one of the impedi-

ments mentioned in article 159, after the vessel has left the port where the voyage commences, each party shall nevertheless have the option to cancel the charter-party, but the charterer shall pay distance-freight on the part of the voyage effected at the time the charter-party is cancelled, as is proved by article 160.

If the agreement is cancelled, the Captain shall have to take, on behalf of the owner of the cargo, the measures provided by article 57.

If, in consequence of one of such impediments, the vessel is detained, either at the port of loading, or at any port where the vessel should call in the course of the voyage, subsequently to the shipment of the cargo, the cost of the detention shall be apportioned between the vessel, the cargo and the freight in the same way as for general Average settlements ; however, if the agreement is cancelled, such apportionment shall not take place as regards the expenses incurred subsequently.

Art. 164. — If, in consequence of damage, a vessel must call at a port of refuge and if a survey of the cargo, made according to the provisions of article 41, proves that the whole cargo or an important part of same was likely to be spoiled in consequence of the delay incurred through the repairs to the vessel, the charterer shall be at liberty to cancel the agreement, against payment of distance-freight, as provided in article 160. However if the vessel has been chartered by several parties, no use shall be made of this option if one of those parties insist on the continuation of the voyage.

NORWAY

NORWEGIAN ASSOCIATION OF MARITIME LAW

Conflicts of law as to Freight

The Norwegian section of the International Maritime Committee has decided to answer as follows to the questions put by the section of the Netherlands :

All these questions have been solved by the Norwegian maritime law of 1893.

As regards the calculation of distance freight, the following remarks are especially made :

The rules should be identical in both cases.

There are still some doubts as to the opportunity to abandon the old rule of Norwegian law re distance freight, allowed according to the distance effected in proportion to the whole voyage and by taking into account the time occupied by the part of the voyage effected, the special costs, hardships and expenses relating to same as compared with the part of the voyage which remains uneffected.

One cannot in such cases assimilate a contract of carriage with a *locatio operis* and say that if the final object is not obtained-viz, if the merchandise is not brought to the place of its destination, — no payment shall be made. We must rather try to solve the problem according to the special circumstances of each case and not have all the risks borne by one party. This is however the result not only by following the rule adopted in England and in the United States where distance freight is not admitted, but

also when we allow only to the ship under the form of freight, that which the merchant saves (or can save) on freight by reforwarding the cargo by another ship to the place of destination, — this meaning after all that it is decided aforehand that if anything turns wrong, the ship alone shall bear the whole loss.

But a reasonable application of the rule admitted in Norwegian law would allow to equitably apportion the loss between both parties. They have besides undertaken together the venture.

It is an error to say that Norwegian shipowners are indifferent to this question seeing that eventually, their underwriters would refund them the loss. Freight is regularly insured by Mutual Shipowners' Associations ; so in fact the shipowners themselves who will bear the loss if the pro rata itineris freight is not allowed.

Besides, the question is not entirely solved if no distance-freight is granted, or by allowing the difference between the freight provided for in the contract and the freight to be paid for reforwarding the goods to their destination. Then comes the question whether the charterer himself shall be at liberty to undertake the reforwarding ? Or has the captain the right to require that he shall himself take care of that ? Is he obliged to reforward himself? If the freight from the port of refuge to the port of destination is higher than the rate of freight formerly stipulated for the whole voyage : shall the vessel in such case have to pay the difference ? (We observe here that Belgian law, art. 97 says that she must not). If the charterer will not wait until the ship is repaired, or if he does not authorise the Captain to reforward the cargo, but means to take it off himself, must he not then pay the whole freight ?

One of the members of the Committee expressed as

follows his personal opinion on the question of distance-freight :

« When in consequence of some circumstances which are not imputable to the ship, the latter cannot carry the cargo to its destination, it is a fact that the contract of carriage has not been executed. In my opinion, the logical consequence of that is that under this contract, the ship is not entitled to any remuneration. But as the charterer, on the other hand, must not draw a profit ont of this fortuitons circumstance, which has prevented the termination of the voyage, he ought to pay to the first ship the difference between the freigt agreed upon and that which he has to pay in order to have the merchandise carried from the intermediate port up to the place of destination — i. e. the amount which he profits thereby.

Question I.

Nr I. — In the case where part of the cargo has been sold for the needs of the vessel, no freight at all should be due.

Question II.

A.— When the cargo is sold in the course of the voyage on account of an average owing to a « vice propre », the whole freight shall be due.

B. — For goods sold in the course of the voyage on account of their damaged condition, the freight pro rata itineris is due.

The ordinary rule according to which the vessel has no freight to receive for goods which are not on board at the time of arrival of the ship at destination, seems unfair in the latter case. The charterer must not be entitled to receive the whole sale-price of the cargo, without

deduction of distance freight, because in that case the ship would have to bear part of the risks of an accident befalling the cargo only.

QUESTION III.

(See question I.)

QUESTION IV.

Some maritime legislations have introduced special rules with regard to half-freight and dead-freight, for two reasons — in the first place, in order to avoid litigation (although this, very often, is not avoided thereby), but also and especially because they do not wish to give to the charterers the option — for instance when there occur some alterations in the position of the market — to cancel the shipment or the charter-party, or not to tender the whole cargo booked, if they know aforehand what shall be the amount of the indemnity they will have to pay. It seems to us that there is no reason to abandon this system.

QUESTION V.

Demurrage cannot be considered as an additional freight, seeing that it is earned definitively and independently, without regard to the subsequent result of the voyage to which it relates, whether any freight at all be earned or not.

Neither does demurrage contribute to General Average. It must be considered merely as in remuneration for freight and treated on the same footing as the latter — in fact the ship is put at the disposal of the shipper for a protracted time, for the operations of loading and discharging.

The Norwegian maritime law (art. 119) fixes a certain number of lay-days per ton register (there being a difference between lay-days for sailing vessels and lay-days for steamers), and article 120 fixes the delay of demurrage at one half of the lay-days, unless the charter-party should contain other provisions as to this.

The Scandinavian maritime laws have taken over this system of the Norwegian law of 1860 ; this system seems to recommend itself, seeing that thus there is a rule inserted in the law for the case where the charter-party is cancelled and that we are not compelled to fall back upon « the customs of the port » which very often turn out against the ship's interests.

In the maritime laws of the North, it is further provided that lay-days begin runming *ipso jure* from the day fixed by law, without any processor formality on the side of the vessel being required.

Besides, we may safely add that there is no reason whatever which should induce us to require such processor formalities, the sole consequence of which would be to involve useless expenses.

SPAIN

His Excellency the Minister of the Marine
Madrid.

By Royal Order of the 23rd July 1906, the undersigned has been appointed as a delegate to represent the Spanish Ministry of Marine at the international Conference which is to meet during the present year in an Italian port, in order to approve the draft-treaties relating to Limitation of Shipowners' Liability, on Hypothecations and Maritime Mortgages and Liens and more especially to discuss the Questionnaire submitted by the International Maritime Committee with regard to Conflicts of Law as to Freight, and to frame a draft-treaty wich shall be a basis for unification of Maritime law on matters so important for international navigation and trade.

By the same Royal Order, I was instructed to commence the necessary work for studying and solving those important questions and to prepare a Report. In consequence of so flattering a trust, the undersigned begs to formulate the following conclusions, the arguments and reasons of which, although they have been summarized as much as possible, as is proper for such meetings, can nevertheless be developed further.

I.

As to the question whether any freight is due when the vessel is lost, but when the cargo is salved, wholly or poartly, our Code of commerce provides, in its article

662 that « when the cargo is saved from shipwreck, a freight corresponding to the distance effected by te ship carrying the goods, shall be due; and if, after the vessel having been repaired, said cargo arrives at its destination, the whole freight shall be paid, without prejudice as as to the amounts due for General Average ».

This provision is litterally copied from art. 788 of the Code of commerce of 1879, and it is quite in conformity with article 303 of the French code.

A similar provision is inscribed in Belgian law (of 21st August 1879) whose article 98 allows an indemnity to the Captain when he has co-operated to the salvage of the goods which have not reached their destination.

The Italian code contains these two provisions in question, but further, its article 578, first section, gives him a right to the freigt earned up to the spot where the ship is wrecked, and in its second paragraph, it provides that the Captain shall be entitled to receive the whole freight of the voyage in case he has contributed to the redemption of the goods.

According to the German code (article 632) *pro rata itineris* freight is also due by the goods saved, such freight being however not to exceed the value of the marchandise salved.

« For the calculation of the *pro rata itineris* freight — says article 633, — account shall not only be taken of the distance over which the goods were actually carried as compared with the whole of the voyage; but it will also be proper to consider the proportion of costs, expenses, perils and trouble which are relating mainly to such part of the voyage as has been effected and to the part of same which remains uncompled ».

The Turkish code (art. 125) is in conformity with the wording of the Italian law, but adds that the goods salved

and delivered to the parties interested without intervention of the Captain, are not to pay any freight.

In the Netherlands (art. 483 of the Code of commerce), in Rumenia (art. 588) and in the Hispano-American Republics, the same rules as promulgated by the Spanish Code are followed.

From the preceding provisions results that the maritime and commercial legislations of all countries agree that the *pro rata itineris* freight shall be due from the port of loading up to the place of shipwreck by all goods salved, in case the ship is lost. No system could be more equitable or more logical, especially in our modern times; Now that the practice of maritime insurance has taken so wide an extent, one may safely state that nowadays no carriage by sea is effected which is not insured against all risks of the sea; under such conditions, and considering that in case of shipwreck the shipper does not lose his goods, seeing that the underwriters pay back their value, it is but equitable that the shipowner, in his turn should not lose the price of the carriage interrupted by an accidental cause.

Divergencies existing on that subject only bear on the mode of fixing the quantum of freight.

Our code, like almost all foreign codes, does not determine with accuracy how the *pro rata itineris* freight is to be calculated. However, the Italian law has under this head one advantage as compared with most of the legislations now ruling in Europe and in America : it is the obligation for the contracting parties, contained in article 652, to provide in the charter-party (wich must be made out in two copies and signed by both parties) the conditions under which the freight is agreed upon; in this way, it becomes very easy to solve the question which is examined here, seeing that then the contract provides itself what is the law by which is is ruled.

But when such precaution has not been taken, neither paragraph 8 of this article, nor the rules of construction contained in article 658 give a solution which is really equitable for the case under consideration, seeing that only the price agreed upon is foreseen, as well for months as for days or for a certain period of time; but no account is taken of the value of the goods salved or of the expenses which the Captain had to lay out for the salvage.

For these reasons, we think that the system of the German Code ought to be adopted : in the first place because, if as a rule, the charterer is covered by insurance (and in the present state of transoceanic navigation, the contrary seems not admissible) we must then consider that he loses nothing, and we would only cause a prejudice to the rights of the underwriter, (consequently also to those of the charterer) if we did not give to the Captain some advantage in order to stimulate him to salve as great a part of the cargo as possible, especially when, as is generally the case, a certain amount has been stipulated as primage for the Captain. In the second place, because with distance-freight, the shipowner gets no indemnity in consideration of the carriage, when other expenses have been necessary for the salvage.

For the various reasons explained above, the undersigned thinks that article first of the draft-treaty should read as follows :

Article first

« In case of loss of the vessel, the goods salved shall pay » freight for the part of the voyage effected provided the » Captain has co-operated to the Salvage.

» In such case the freight to pay shall be an indemnity » for the calculation of which account shall be taken of the » distance effected and the part of the voyage remaining to » be completed, but also of the expenses incurred, the time » lost, the perils run by the crew and the pains taken by the » latter. »

II

The second question is whether freight shall be due for goods sold in the course of the voyage for the needs of the vessel, or on account of their damaged condition, whether owing to a « vice propre » or to an accident (fortune de mer).

The Spanish Code answers this question in two articles: by article 659, it authorizes the Captain to sell part of the goods in order to repair deteriorations suffered by the vessel or in order to meet « absolute and urgent needs ». In such case, when the charterer agrees on the price of the goods sold, the whole freight is due if the Ship reaches the port of destination, and in proportion to the distance effected if the ship is lost before reaching that port.

In article 640, the Spanish Code provides for the case where the ship is not seaworthy; if this is sufficiently proved, no freight whatever shall be due, and the charterers shall have a right to claim an indemnity.

Articles 479 and 480 of the Dutch Code are in conformity with these provisions of Spanish law.

Similar provisions are to be found in the Portuguese Code (art. 556 and 567) which further determines that, if owing to an accident it becomes necessary to repair the ship, and if the charterer discharges his goods in order not to have to await until the repairs be completed, the whole freight shall be due.

The German Code, in its article 640, provides for the case where in the course of the voyage, it becomes necessary for the ship to effect repairs; in such case, it gives to the charterer the option to discharge the merchandise before the completion of the repairs provided he pays the whole freight. If he choses to await the completion of the repairs, the time taken by these latter does not count for the payment of freight. Neither is any freight due if the ship becomes again unseaworthy; in such case, the ship-owner alone is liable for the deterioration and damages suffered (art. 560).

Between our Code and that of Italy (art. 570, 571 and 572) there is but one difference, viz that it provides expressly that when it becomes necessary to repair damages incurred in consequence of a force majeure, the charterers are to bear the delay or pay the whole freight. Provisions in the same sense are contained in articles 296, 297 and 298 of the French code, articles 119 and 120 of the Code of Turkey and the codes of most the Hispano-American Republics.

So there are no very great differences between the various codes and this could not be otherwise, seeing that all must recognise in favor of the Captain the right to sell merchandise for the commun sake; for the sake of the charterers, because without this, the voyage could not be completed, or if the voyage was continued without the damages being repaired, the vessel would sail under very dangerous circumstances and would at least be exposed to the risk of arriving at destination with such delay that the goods would not get at destination the same marketprice which was expected for same; and for the sake of the shipowners who have also their benefit by it, because if damages are repaired in proper time, they are not set out to run greater risks :

It is not probable that one should pretend to be paid for the freight agreed upon, for such days as are devoted to repairs; but in order to avoid the possibility of such claims, it would be convenient to adopt the provisions of the German code on this subject. Consequently, there should be inserted in the draft-treaty an article reading as follows :

ARTICLE SECOND

« If, in the course of the voyage, it became necessary,
» owing to an accident, to repair the ship or procure provi-
» sions for same, the Captain shall have the right to sell the
» merchandise necessary in order to cover such expenses ;

» in that case, the whole freight shall be payable if the ship » reaches her destination; in the contrary event, freight » shall be payable in proportion to the distance accom- » plished and the indemnity shall be calculated as provided » in the preceding article.

» No freight shall be due for days devoted to repairs or » to providing supplies.

» The shipowner shall also lose any right upon freight, » and shall have to indemnify charterers in any case where » the latter shall prove that the vessel was not in seaworthy » condition when she left the port of loading; this proof » may be supplied even against the certificate of seawor- » thiness if such certificate has been delivered to the » vessel ».

III.

The third questions relates to the case where the vessel is detained at a port of call and cannot continue her voyage, but where the cargo, shipped on board of another vessel, reaches its destination.

Article 567 of the Spanish Code obliges the Captain to charter at his own expenses another vessel in fit conditions, in order to tranship his cargo on same et to send it to destination; for this purpose, he is bound to take the necessary steps in the port where he called and in the neighbouring ports within a radius of 150 kilometers. If he cannot find another vessel, he shall land the cargo and put it at the disposal of the charterers to whom he shall render an account of what has happened, within the shortest possible delay; in such case, freight is to be settled in proportion to the distance effected.

The French code (article 296) obliges the charterers to wait until damages have been repaired, or to pay the whole freight. If repairs cannot be made at that spot, the captain must charter another vessel and if this is not possible, he is entitled to a distance-freight only.

The Italian code (art. 570) contains the same provision;

but adds that if the Captain charters another vessel, this second charter-contract must be considered as having been concluded for the shipper's account.

The Dutch Code (art. 578) solves this question in the same way, but obliged the Captain to charter another vessel for his own account, without having the right to claim an additional freight for the other ship or ships carrying the cargo up to its destination. A similer provision is inserted in the Turkish Code (art. 118).

Belgian law differs from all the above quoted legislations inasmuch as it provides (articles 94 and 97) that if the reforwarding freight is lower than the freight agreed upon for the first vessel, the latter must have the benefit of such difference; if the reforwarding freight is equal to the freight contracted for, the first vessel gets nothing, but if the new freight is higher than the freight first agreed, the difference shall be for the first carrier's account.

According to the German code (art. 634) the captain may charter a vessel for account of the shippers, but only after the latter have paid the distance-freight and other expenses relating to same.

As it will be seen, these legislations admit that the liability entered into by the captain as towards the charterers, does not fall away in the event of an accident, but that he must charter another vessel, if possible, to carry the cargo further to its destination.

In such case, the dubious question is: who is to bear the difference of freight for the new vessel; but Belgian law seems to us to solve this question in an equitable way by providing that if the new freight is lower than the freight as per contract, the charterers shall have to pay the difference to the first ship; they shall also pay the freight if it is the same as provided in the contract, but if the new freight is higher than the rate agreed in the contract, the

difference shall be for the shipowner's account who had first undertaken to carry the marchandise to their destination.

We think that this question should be solved under the following form :

Article Third

« If, in the course of the voyage, the vessel becomes » unseaworthy, the Captain shall be bound to charter » another vessel in good conditions, which vessel shall » receive the cargo and carry same to its destination ; for » this purpose, he shall have to look out for a vessel, not » only at the port where he called, but also in the » neighbouring ports within a radius of 150 kilometres. »

« If the freight for this new vessel is lower than that » agreed upon for the first ship, the charterers shall pay the » difference to the first carrier ; but if the new freight is » higher, the difference shall be for account of the vessel » which has become unseaworthy. »

IV

The next question is whether, — in case the charterer cancels the voyage before having loaded any merchandise, or loads only part of the goods contracted for, the indemnity due shall be settled by reference to common law as to damages, or whether the indemnity due in such case ought to be fixed by law.

In such case — which is termed in maritime practice as being « dead-freight » the Spanish Code (art. 688) authorises the charterer to cancel the contract before any loading of goods, against payment of one half of the freight agreed upon.

The same provision is to be found in Belgian law (art. 75) which further adds that when part of the cargo is already loaded, the charterer can no more cancel the contract ; it notwithstanding he does so, he must pay the entire freight,

unless the Captain accepts other merchandise to complete the cargo up to the quantity stipulated in the contract.

The French Code (art. 288), also provides that the half-freight shall be due in case the contract is cancelled before departure of the vessel ; but if part of the cargo is loaded and the vessel sails with such incomplete burden, the whole freight is to be paid. A similar provision is contained in the Italian Code (art. 564), in the Rumenian Code (art. 574) and in the Code of Brazils (art. 594), but the latter also provides that in order that only half the freight be payable, it is necessary that the cancelment of the contract have taken place before the commencement of any operations of shipment.

According to the Code of Turkey (art. 108), the cancelment of the contract must have taken place before lay-days have begun running ; and the German Code repuires that this cancelment takes place before the commencement of the voyage ; now the voyage is considered as having commenced when the charterer has authorized the Captain to sail, or when the cargo is wholly or partly tendered on board and that lay-days have expired.

It is beyond doubt that from the very moment the ship is put at the disposal of the charterer, expenses are incurred for supplies, and on the other hand, the shipowner may have been obliged to decline other proposals, perhaps much better, because he had to execute the contract. Under such conditions, it is quite natural that if the contract is subsequently cancelled, the shipowner must be entitled to an indemnity, unless be can easily procure another cargo for the same voyage and on the same terms.

On this point, all legislations agree, although they differ somewhat as to the questions of detail.

It would therefore be convenient to agree on a certain delay during which the cancelment of the contract

may be notified so that only half the freight be payable, and amongst the various systems described above, the best one seems to us that of the Brazils, viz : that the cancelment must be notified before any operations of loading, because in that case, the greatest expenses for the vessel are saved and the latter has so much sooner the occasion to look out for another freight.

For these reasons we are of opinion that we might draft as follows an

ARTICLE FOURTH

« The charterer shall have the option to cancel the con-
» tract of agreement against payment of half the freight,
» provided such cancelment be notified before the day fixed
» for the commencement of the loading. After that date, the
» entire freight as stipulated in the contract shall be pay-
» able. »

V

Finally, the last question is whether demurrage must be considered as an additional freight or as an indemnity, and whether the debition of demurrage shall be subordinated to a written protest.

We are of opinion that demurrage cannot be considered as an additional freight, because a vessel is chartered for the purpose of carriage, i. e. for the delay which is required for the voyage of the cargo from the port of loading to the port of discharge. If the vessel is detained beyond the normal time, either during additionnal days or during additional hours in either of those ports, for the loading or for the discharging, this involves for the vessel a loss and therefore she is entitled to an indemnity under the form provided in the contract of affreightment or charter-party. For this reason, according to our code (art. 652, paragr. II) these documents must mention « the

lay-days and demurrage days which shall be taken into account and the amount due for each of them ».

In order to ascertain exactly when lay-days and demurrage commence running, and to avoid all litigation on that point, the debition of these indemnities ought to be subordinated to a written protest.

Our conclusion is, therefore, that we propose an

ARTICLE FIFTH.

« Lay-days and demurrage are considered as an indem-
» nity due for the delay and for the quantity stipulated in
» the charter-party ; to render admissible a claim for such
» indemnities, a written protest shall be required. »

This is, Excellency, according to the opinion of the undersigned, the way in which the question submitted for examination, are to be solved, and in that sense I have drawn up these conclusions which are to be remitted to the International Maritime Committee, so that they may be taken into consideration at the next conference.

The author of these remarks shall be enabled to defend there his opinion, unless your Excellency shall be pleased to give other instructions.

The draft-treaty on Limitation of Shipowners' Liability has been discussed and passed at the Conference held at Liverpool in June 1905; if Spain was not represented at that meeting, account has nevertheless been taken of the provisions of our Code of Commerce, and the various articles of the draft-treaty are not in contradiction with the general principle according to which our law settles the liability of shipowners, limited to the value of the vessel.

As a means of compromise, which seems of great practical interest and which will prove, no doubt, an advantage for maritime trade, they have inserted in article 4 the

system established in Great-Britain and always put into practice by the English Courts, viz, to replace the liability in question by payment of a lump indemnity of £ 8 per ton gross register.

In consequence of this option, there can no more be any divergency, seeing that in all countries the register-measurement has been settled in a uniform way, in accordance with the measures agreed upon by the Constantinople treaty of 1873.

The undersigned is therefore of opinion that the draft-treaty which is to be examined in a last reading and which is the result of long studies, ought to be approved, seeing that there is no question of intruducing such reforms as would not be in accordance with our legislation, or which might prejudiciate our interests.

The same may be said for the draft-treaty on Maritime Mortgages and Liens, which was taken up at the Conference of Amsterdam, discussed and drawn up at the meeting of Liverpool.

The result at which this draft-treaty leads is not very diverging from the system established by article 580 of our code, and we think that it may be adopted as it stands.

The undersigned shall limit himself, for the time being, to approve the draft-treaty, with the reserve, already expressed, as to possible modifications.

JUAN SPOTTERNO.

HUNGARY

HUNGARIAN ASSOCIATION OF MARITIME LAW

Conflicts of Law as to Freight

FINAL CONCLUSIONS

I. — Freight pro rata itineris
II. — Freight in case cargo is sold.

1. In case of sale of cargo for the needs of the vessel, the whole freight shall be payable to the shipowner; the same shall be the case when such sale takes place for the common sake of ship and cargo (but in such case, the rules of common average are applied as well as in the case where the sale is effected for the sole benefit of the vessel, because in either of those cases, the owner of the merchandise receives, at the port of destination, the value of the goods sold in the course of the voyage and so it is but natural that he sould pay the freight.

2. The same should be the case when in the course of the voyage, cargo is sold in consequence of its damaged condition owing to an accident (fortune de mer).

As to the question whether any freight is due to the Captain for goods sold in the course of the voyage on account of their damaged condition, owing to a vice propre, the Council of the Hungarian Association of Maritime Law thinks it fit not to give their decision, because it must previously be « examined whether the Captain shall have the option, and whether he shall be

eventually obliged to undertake the sale of such merchandise in the course of the voyage, and what are the precautions to which he must resort in order to protect the interests of the charterers.

SEPARATE VOTE OF Dr DARDAY

To paragraph A, 2 of the second question, it should be answered that the settlement of this object does not come within the scope of maritime law.

REASONS

As the Captain must be submitted to the same Rules as the common carrier and as the principle of law is that the common carrier or transporter are not responsible for damages happening to goods owing to a « vice propre », but only for damages resulting from the transport; considering finally that the captain is not a merchant and that consequently, he has not the special knowledge required so that he could be authorised or obliged to appreciate the condition of a marchandise as far as the internal condition of the stuff is concerned — there is no reason to authorise the captain to sell the cargo in the course of the voyage on account of its damaged condition if the latter is owing to a « vice propre ».

If he did so nevertheless, and without special authority from the owner of the goods, he would act only as a *negotiorum gestor*, and in such case, only the rules of common law should be applied.

III. — Of freight in case the vessel is declared unseaworthy.

Freight is due when the vessel is declared unseaworthy at the port of refuge and the cargo reforwarded by means of another ship.

When the new charter is made at a higher rate than the first one, the difference is for account of the owner of the cargo, but, as far as possible, the captain is bound previously to ask authorisation from the owner of the cargo before concluding such new charter.

IV. — Question of half-freight and dead-freight

If it is was considered convenient to fix the indemnity due to the captain in case the whole or part of the cargo is not tendered for shipment, we would propose the following rule :

If before the date fixed by the contract for the shipment of the goods, the charterer expressly declares that he cancels the voyage — provided in such case the loading has not yet been commenced or that the ship has not yet sailed to the port of loading, — in such case only half the freight is due.

2. If the charterer cancels the contract, but without having notified such intention withim the delay stipulated in the contract for the loading, not only when the vessel has already commenced taking cargo, but even when the ship has already commenced her voyage towards the port of loading, the whole freight shall be payable.

V. — Delay in loading or discharging

Except in the case where the contract of affreightment does not contain any provision as to the lay-days, the debition of demurrage must not be subordinated to a special protest, but the captain is in any case bound to advise the parties interested when the loading and discharging commence, so that the parties may know, by the contract itself, when the lay-days commence running, and eventúally when demurrage commences.

DANMARK

DANISH ASSOCIATION OF MARITIME LAW

Conflicts of law as to Freight

(The Danish Association had sent to the International Committee, for the Liverpool Conference, the following answers to the Questionnaire) (1).

I.

It is a principle of our maritime Law of 1st April 1892 that no freight is due when the goods are not delivered at the port of destination (*Art.* 151).

Consequently, no freight is due for goods sold at the port of refuge to cover general average expenses.

However, the shipowner is entitled to recover by way of general average contribution the freight lost. Expenses which were saved are deducted (*Art.* 204).

When the goods are sold at the port of refuge for their owner's account, the whole freight is due (*Art.* 131).

When cargo is sold at the port of refuge on behalf of the vessel, it is optional to the owner of that cargo : 1° to claim the value of the goods at the port of destination under deduction of the freight *Art.* 200), 2° or to claim the produce of the sale of the cargo at the port of refuge, without deduction of freight *Art.* 149 and 200).

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(1) The question are mentioned in the report of the Hungarian Association.

II.

If the ship is lost or declared unseaworthy, freight is due *pro rata itineris*. Article 160 however provides that not only the actual distance will come into account, but also the duration of the voyage, the special difficulties and the expenses. In case parties do not agree, this freight for « distance » is fixed by experts.

When the ship is lost or declared unseaworthy, the charterer may abandon the whole cargo in order to liberate himself from the « distance » freight (*Art.* 160).

III.

Freight is capable of being insured (*Art.* 230).

IV.

(As to freight *pro rata itineris*, see sub II).

When the vessel is lost or declared unseaworthy, the shipowner has no right to reforward the cargo for his own account, in order to claim the whole freight. But it is his duty to protect the interests of the charterer and to act as a *negotiorum gestor* for same. It may, according to circumstances, be his duty to reforward the cargo for charterers' account.

FRANCE

FRENCH ASSOCIATION OF MARITIME LAW

Limitation of Shipowners' Liability

REPORT

on the draft treaty submitted to the International Maritime Committee by the special Paris Sub-Committee (4-5 June 1906) and submitted to the Venice Conference

by René Verneaux,
Dr. jur.,
General Secretary of the French Association of Maritime Law

After having studied since its foundation, that is since ten years, the question of Limitation of Shipowners' Liability, the International Maritime Committee has to examine same once more at its Venice Meeting, and the basis for the discussion will be the draft-treaty which was submitted to the Committee by the special Sub-Committee which sat in Paris (June 1906).

We are going to consider this draft-treaty here : 1° as to its general economy ; 2° on its principal points.

I

General Features of the draft-treaty

It seems proper first of all to recall to the mind the essential, and in our opinion, intangible, features of the

work of Unification which has been undertaken and which finds its latest expression in the draft-treaty of the Paris Sub-Committee. Substantially, and in broad lines, it may be summarized as follows :

1° Determination of estate of execution, which forms for each voyage, the sole property on which the shipowner shall be liable, towards third parties, for material damages caused by the faults of the crew ; 2° option to the shipowner to free this estate against payment of an amount the basis of which is fixed aforehand by the law itself.

All those who followed the labours of the International Maritime Committee, knew the reasons why the application of the draft-treaty has been restricted to the damages to goods and merchandise. In order to obtain the assent of the British members, it has been an absolute necessity to abstain from including personal injury. It is therefore useless to insist on that point. The only thing important is to appreciate the system in itself.

In its latest shape, this system appears to us to be a satisfactory organisation of the liability question, and as the simplest and most logical solution of the the very difficult problem which the divergency of the various legislations brought before the International Committee.

The chief opposition was between the continental system limiting the responsability within the maritime venture or « fortune de mer » and the British system fixing the personal liabillity of the owner for each accident at £ 8 per ton. The reform proposed is essentially to maintain the continental system in its principle, and to correct it by the addition of the British limit

The first merit of the system proposed in the draft-treaty is that same adopts the continental system in its best formula, that is to say that it admitted that for the debts in question, the owner is not liable personally, but

that he is liable only on the ship and accessories of the ship which form together the « patrimony of execution ». The Sub-Committee rejected, very rightly, the defective formula of the abandonment which is contained for instance in French law. Doubtless, as we have tried to demonstrate. the French law, notwithstanding its wording, actually leads to the responsability *in rem*, but at the same time leaves room for misconstruction as it allows to contend that there is for the shipowner a personal liability without any limit, if he happens to endanger what is called his « option of abandonment », and this very circumstance raises fears which very often actually paralyse his initiative and, after an accident, prevent him from acting in such way as would prove most useful to all interests. The decisions of the Courts do but incompletely illustrate the inconveniences of such position. But in fact, the evil is a great one and it is urgent to remedy to same by setting apart *de plano* the « patrimony of the sea venture » and by declaring that the latter will form the sole guarantee of the creditors, the latter having in no case the right to lay on the shoulders of the shipowner, for the facts in question, a unlimited personal liability.

However, it was not sufficient to give to the continental system the best formula it required; it was also necessary to add a corrective.

Indeed, this system has some inconveniences which one cannot fail to perceive. It makes the liability correspond to the value of the ship. Consequently, whilst the liability decreases and almost disappears for owners of ships becoming old and out of fashion, the responsibility increases and becomes considerable for the owner of the latest mail steamers combining all the improvements of modern progress and shipbuilding. The result of such system would be to discourage shipowners and withhold

them from this expensive industry, which is also the most interesting branch of maritime commerce. Doubtless, the requirements of modern life will provoke such expensive improvements. But neverthelcss it may be stated that from the economical point of view, the system of « fortune de mer » is open to criticism.

The defaults of the system became apparent in the course of the nineteenth century. Formerly, it had not such grievous consequences as it has at present. There was but little difference between the various commercial vessels with regard to the initial costs of shipbuilding. Nowadays, to the contrary, there is a considerable difference between the cost of a sailing vessel or of a cargo-steamer of the lowest description and that of a mail steamer of the better description. If we add the difference of age to the difference in price of shipbuilding, we can ascertain that the continental system of « fortune de mer » leads to a disproportion of liabilities which could not have been foreseen by the legislators of the beginning of the nineteenth century and which appear nevertheless to be enormous if we try to express them in cyphers, seeing that a new mailsteamer may be worth 800 francs, 1,000 francs or even more, per ton and that an old cargo-boat sometimes is barely worth the price of old iron and old wood.

But such reflections do not suffice to appreciate the system from the point of view we take. We should further take into account such considerations which particularly apply to countries where, as is the case in France, there are special systems of encouraging the commercial marine. Ships which acquire navigation premiums or postal subventions are thought to have a supplementary value which is due to their special character and derives from application of rules purely national.

If postal contracts subject the payment of State's subventions to the condition that the ship which receives the subvention, be home-built; if premiums to navigation are reserved, either wholly or partly, to ships built on the wharves of the country, national shipbuilding industry will of course, be encouraged. But, on account of this very combination, the owner sailing his ships under such system is generally submitted to a higher liability than that of a similar foreign ship.

Certainly, neither the premiums nor the subventions must be included in the « fortune de mer ». This however does not take away that the shipowner who receives premiums or subventions for his ship exposes generally a capital which is artificially increased, as compared with the prices of ships on the world's market.

Therefore, the continental system must be corrected. Now, here we have the English limit which will enable us to effect such correction very easily. Only superpose it to the continental system and we shall have a regimen which is quite satisfactory.

On the other hand, the Continental nations cannot content themselves with a mere substitution of the British system to their own old rule. Here, we have to examine in its turn the British system. Its first consequence is that the liability remains the same for a ship worth 800 or thousand francs per ton and for the vessel which is merely worth the price of old iron and wood. At the first glance, one should think that this constitutes an inducement to make away with old ships (1). This might perhaps be the case if the English rule could always work normally. But

(1) Compare-Report of the Commission of 1860 and appreciation of M. Milner Gibson in 1862, quoted by Sir Richard Webster in his speech at the House of Commons, on 21st March 1900.

this rule is far from producing always the same effects. The creditors may find before them a shipowner who is in fact a single ship Company, having no other assets whatever than the very ship they sail; if the ship is lost, the creditors, who can but rely on their right up to £ 8 per ton, have in fact nothing upon which they may enforce their claim, seeing that the whole of the Company's assets is at the bottom of the sea. They are exactly in the same position as the creditors who have a claim under the continental law. As a practical result, the shipowner then has the benefit of two limits, and the option between those two systems, seeing that when the ship is lost, he may hold himself freed, and that in the other event, he may keep his vessel provided he pays £ 8 a ton. Is it not then fitting to let aside that part of the English rule which is only of an illusory effect, and to maintain only that rule in so far as it fixes a maximum limit?

It is logical indeed to add one to another two rules which correct themselves mutually. When taken separately, they leave room to justified criticisms and the fact that both continue to exist in the maritime commerce world creates uncertainty an unequalities which are all grievous indeed. If to the contrary, we improve the continental system by adding the British limit, we effect unification by a combination of both which is a natural consequence under the existing circumstances.

In order to summarize the principal advantages of the solution embodied in the draft-treaty, whe shall again enumerate the following arguments:

1° As a consequence of the reasons explained above, it is the only way to secure to the continental shipowners the same position as that of the british shipowners with regard to the risks, if we consider that to the present limit, maintained in England, the possibility of constituting single ship companies should add itself.

2° From an economical point of view, this solution is the only one which constitutes a progress. It creates in favor of the owners of high-valued vessels an advantage which is fully justified : the ships the navigation of which should be the more encouraged are the best built, the strongest and the newest ships, that is to say the dearest. It is but just that the liability should not increase together with the value of the vessel, but to the contrary, that such liability will not exceed the average-value of ships, so that it be not an impediment to expensive improvements both with regards to the commodity and the security of the passengers. Now, the solution proposed is of such a nature that it will be an encouragement to the must useful improvements.

3° As regards the practical requirements, it also answers fully the purpose. Nowadays, when a ship causing a collision, is arrested, bail must be given, to release it, up to at least the value of that ship and her freight. In order to determine what is the amount of these values, it is necessary, — unless there be an agreement — to resort to a survey by experts ; even if we suppose such survey to be effected speedily, still it involves a delay which is always too long with regard to the requirements of modern navigation. It is, of course, desirable that the ship may be released immediately, without any interference of experts and without discussion, by offering bail for an amount equal to the limit fixed aforehand by the Law.

II

Review of the principal points

1. *Determination of the claims having for only security the sea-venture* (i. e. the property which the shipowner risks at sea). As shown in the Report presented on behalf of the Paris

Sub-Committee, the text as it was adopted, includes the claims arising out of the defaults under the contract or the « aquilian » faults having caused damages to goods, whatever may be the legal relations existing between the parties. It was the result of lengthy discussions which, having commenced at London, were continued at Hamburgh, Amsterdam and Liverpool, and it is out of the question to come back again on same. We shall merely propose a slight addition with regard to the damages to be taken into consideration. The last paragraph of article 2 refers to damages to dykes, quays and other fixed objects. There is no reason why we should not mention at the same time all damages caused to other movable works and objects such as dredgers, buoys, floating lights and floating docks. We could therefore say : « damages caused to dykes, quays, and fixed works or objects on the coasts ». It does not seem that such wording would provoke any difficulty. (1)

2 *To determine the property at risk at sea with regard to its elements.* — The Paris Sub-Committee have tried to determine exactly which elements are to compose the « sea property » (patrimoine de mer). The settlement of that question is the more necessary as, according to the system adopted by the Sub-Committee this « sea property » shall serve as a basis for maritime mortgages, whilst it shall form at the same time the basis of the limitation of shipowners' liability.

The Sub-Committee include in that « fortune de mer » in the first place together with the ship, the freight of the voyage. The question then arose whether it should be the net or the gross freight. And as far as this is concerned

(1) At their meeting of June 1st 1907, the French Association of Maritime Law have adopted this proposal which is now moved on their behalf.

the Sub-Committee have thought it necessary to reverse the resolutions adopted at the Amsterdam and Liverpool Conferences. The text adopted at Liverpool runs as follows : « By freight is meant the gross freight and passage money even if paid in advance, deduction being made of the charges which are proper to the same. » The Sub-Committee have thought that they had better drop this solution altogether and to replace the above notion of freight by the following one : « the freight accruing to the shipowner, without deduction ».

This is in fact a very important deviation from the former resolutions. But has the Sub-Committee shown sufficient reasons to justify their having done so ? It does not seem to us they have. The principal argument relied upon in the Report of the Sub-Committee (page 19) is that the account of charges proper to the freight and which are to be deducted from same, could not be practically made out without resorting to very intricate calculations. As a matter of course, it is desirable to avoid such difficult calculations. But we may reply to the writers of the Report : 1° that such calculations are in no way dispensed with by the system advocated in the Report ; 2° that, on the other hand, it is always easy to avoid them, under the system of the net freight, by merely adopting a lump-deduction as representing the main amount of charges proper to same.

We say, in the first place, that the system advocated in the Report does not make away with the intricate calculations : « It is true » — the authors of the Report own, — that in same cases the amount of the gross freight would require a calculation, for instance when part of the freight is refunded, as is the custom for important shipments ». In fact, the objection based on the general practice to allow discounts has been formulated during the delibera-

tions of the Commission and we cannot but consider it. We must keep therefore in mind that even if we consider that the freight to be included in the estate at risk shall be the gross freight, the Report admits that there must be deducted from the amount of freight mentioned in the bill-of-lading the amount of the discounts. But this deduction of the discounts is far from being so very simple as the Report seems to suppose. The amounts of such discounts are often calculated, not on one single shipment, but on the whole of the shipments entrusted to a navigation company by one client in the course of a whole year. It even often occurs that such discount is calculated on the shipments entrusted to two different Companies whose services are combinated. How would it then be possible to calculate accurately the portion relating to the voyage under consideration? Therefore, even under the system advocated by the Report, we are not freed from intricate calculations. What shall then be the case if, besides such discounts, account must also be taken if other complicated items, such as commissions to intermediate persons, in favour of whom the authors of the Report would no doubt admit also the deduction in the calculation of the gross freight?

We have said, further, that the intricate calculations which seem to rebute so much, could be avoided by valuating to a lump sum the charges which are to be deducted. We might even add, after the above explanations, that even this would be the only means to avoid same. There only remains to ascertain what shall be the percentage to be deducted.

If it is intended to deduct only some items, such as discounts and commissions, one fifth or so, could be deducted. If however the deduction must include navigation dues (according to the solutions adopted at Am-

sterdam and at Liverpool) this would of course involve a considerable deduction (1).

As to the question whether account shall be taken of the navigation dues, we must remind that the Tribunal of Commerce of Marseille (22nd January 1901), and the Court of Appeal at Aix (20 June 1901, *Revue Internat. de Droit Maritime*, XVII, p. 36) have decided that the freigt alluded to by article 216 of the Code of commerce is the net freight, i.e. after deduction of the navigation charges. The decision of the Court of Aix has been annulled by the Court of Cassation on July 3rd 1905 ; but this latter decision of the Supreme Court has been very sharply criticised by Mr. Lyon-Caen, who has shown with strong reasons (See note on this decision, P. and S. 1905, I, 385) that in article 216 of our code of commerce, the term « freight » must be construed as meaning « net freight », i.e. after deduction of the navigation charges.

To these remarks, we may add another one which relates especially to the passage-money. In the draft-treaty of the Paris Commission, this passage money is simply assimilated to Freight. Does this imply that no deduction should be made for the expenses laid out for the food of the passengers, if such expensees are blended with the passage-money proper ? This has not been clearly stated, but such deduction is, of course, necessary, seeing that if not, shipowners could everywhere follow the system resorted to sometimes, of a « restaurateur » supplying food to passengers, who would have to pay it directly to him. That which may be assimilated to freigt, is therefore the passage-money proper.

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(1) As endless discussions could arise with regard to the charges which should be taken into account, one could never succeed to settle by way of compromise this difficult question.

Finally, as regards the wording, it may be considered that there would be an advantage to abreviate the first paragraph of article 3 and to amalgamate it with the second paragraph. We could come back on the wording adopted at Liverpool and formulate the text of the draft-treaty in the following words :

« By freight alluded to in article 2 is meant the gross » freight or passage money proper, even if prepaid, » deduction being made of..... (indication of a certain » percentage) as representing the lump charges which are » proper to same. » (1)

The other elements which the draft-treaty proposes to include in the maritime estate do not seem to require futher explamations.

With much reason, the Paris Commission excluded from the maritime-estate the indemnities payable or paid in virtue of contracts of insurance, as well as premiums, subventions and other national subsidies.

With regards to indemnities due in virtue of contracts of insurance, the opinion of the International Maritime Committee never varied, but always was that such indemmities should be excluded from the estate at risk at sea. It is not necessary further to insist on this solution, to which the French Association have very often renewed their adhesion. (2).

(1) In its meeting of 1st June 1907, the French Association adhered to the proposals of the Paris Commission and did not admit those of the above report on that point

(2) The French Association further expressed its opinion on this point in its meeting of 1st June 1907, by rejecting the contrary opinion expressed in the Report of Mr Lefebvre on Mortgages and Liens. It has been admitted,namely that the indemnity of insurance corresponds to premiums paid in virtue of a contract which all shipowners do not enter into. It would not be logical to treat in a different way the shipowner who insures his vessel with third parties and he who merely constitutes a reserve-fund.

Neither do we think that we must longer insist on the solution given as to premiums, subventions and other national subsidies. In order to prove completely that they may not be included in the estate at risk, it would be necessary to examine each subsidy and to consider it as well in its details as from the general point of view (1). But here, it will suffice to say that it would not be admissible that sacrifices of so special character made by nations in favour of maritime industries should profit in any way to claims of various nationalities, arising from the contingencies of commercial competition. An international treaty could not retain such subsidies as normal accessories of vessels.

3. *Of the maritime estate, considered as constituting a guarantee for each voyage and also, in view of the possibility of arrest in the course of a voyage, for each accident.* — As a matter of principle, in the system of the International Maritime Committee, the vessel and her accessories form an « estate of execution » *per voyage*. This notion, considered in itself seemed to be in contradition with the British conception which considers that the guarantee should exist *for each accident*. At Liverpool, Mr. Acland moved an amendment to the effect that due consideration should be given to this notion of British law, and this amendment has been one of the principal points which have been referred to the Commission for examination.

At the meeting of the Commission, Mr. Autran very clearly pointed out that, owing to the procedure of modern practice, the conflict between these two notions was solved aforehand. He observed that, in consequence of an accident the creditors can, in practice, if the ship is

(1) See on this subject our Study on the « Fortune de mer » Recueil de législation., « 2nd series, T. II, 1906 ».

in such position that she can continue her voyage, arrest her and afterwards only lift the arrest against a guarantee, which, being substituted in lieu of the ship, represents for the parties having arrested the vessel their own guarante, so that the vessel after being freed and having continued her voyage, constitutes in fact a guarantee which is not encumbered in case she should happen to cause another collision by her own negligence.

The draft-treaty of Paris, (art. 8) only confirms the solution wich was thus shown in practice. The sea-estate thus forms in fact a guarantee per voyage, according to the principle admitted by the International Maritime Committee. But, in consequence of the possibility to resort to the arrest and to obtain in that way bail, the creditors have in fact a guarantee for each accident : the English members have thus satisfaction. And we must only point out this solution.

4. *Obligation for the shipowner to refund to the creditors such depreciation of the common guarantee as is caused by his own act.* — To this idea relate two provisions of the draft-treaty which it would seem better to put together.

The first of them is article 4 which obliges the shipowner to make up in money such diminution of the common guarantee which might result from payments to his own personal creditors, having either a lien or a mortgage.

The second is the 2rd paragraph of article 7, according to which the risks of any new voyage are for account of the shipowner, it being provided that no such risks may diminish the guarantee determined by the preceding articles.

It seems useless to come back on the first of these provisions, which has been confirmed several times by the International Maritime Committee.

As to the second one, the principle of same might also

be maintained, but it would seem better to express it more broadly and more clearly, and we would propose the following terms :

« If the value of the guarantee determined by the preceding articles should be dimished in consequence of a new voyage, or of an act of the shipowner performed to his personal benefit, the latter is personally liable up to the amount of this diminution, and in any case, he is not liable beyond same. »

This provision whould be in conformity with art. 5, which autorises the shipowner to substitute to the vessel her value at the end of the voyage, and it would render the meaning of this provision much more clear on a very interesting point. If the shipowner may substitute to the whole of the vessel her value at the end of the voyage, he must also be in a position, if he has diminished that value, to merely making it up again. He must, it is true, account to the creditors for the diminution of the guarantee which he has caused by any acts performed for his own benefit ; but this being once admitted, it is necessary as a matter of general interest, that no initiative on his side be lamed for fear that he might be held liable beyond. He must be at liberty further to trade with his vessel or to act in any other way, without there being any risk to have one of the creditors contending that as the shipowner cannot reproduce again the guarantee (the ship) quite intact, he is liable without limit or at least up to £ 8 per ton. (1)

(1) In thise sense, we may remind that Mr. Autran very rightly proposed a procedure which would allow, after an accident, to determine the value of the ship in such way as might also be opposed to all parties interested. We do not take up again this proposal, in order not to encumber the draft-treaty. At least the concise wording which we propose expresses without difficulties as to evidence a principle on which it seems that everybody should agree and the

5. *Case not provided for by the draft-treaty.* — The draft-treaty assumes always that the owner of the ship and the manager who sails the vessel, are the same person. — and in such case, everybody is agreed that the liability of the owner could not be doubled with a liability of managing owner which is of quite another nature and extent. If there is no unlimited liability in that case, neither must there be any unlimited liability in the case where shipowner and managing owner are two different persons. (1)

Whatever be the circumstances under which a vessel is sailed, the creditors must only have an action against the sea-estate solely. This question ought not to give raise to any discussion. However, as some doubts have been expressed in France on this point, it seems to us that the International Maritime Committee would complete very properly its draft-treaty by adding the following provision :

« The creditors for damages determined by the preceding provisions have no action against the managing owner as far as he is a different person from the owner of the ship » (2).

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object of which is merely to confirm that which is already contained in the first scheme of the draft-treaty (as regards liability ; art 2).

(1) This has been clearly shown by Mr. Abram (*Rev. Intern. de Dr. Marit* XXII, p. 559 and *Bulletin* Nr. 29 of the French Association of Maritime Law.

(2) The French Association adhered to this proposal in its meeting of 1st June 1907 and submits same to the International Maritime Committee.

We add that the provision proposed by us seems to be at its right place in lieu of paragraph 9, last part, which might be left out without any inconvenience. As a matter of course, personel faults or negligence of the shipowner do not come within the scope of application of this draft-treaty. So it is useless to mention same and to state that the preceding provisions do not apply to such personal negligence.

III.

Conclusion

Some details might still be discussed and some controversies maintained. But in ending our report we express our hope that the principles of the draft-treaty of Paris shall not be modified. The organisation of the responsible estate (patrimoine) and establishment of reasonable « ransom » to obtain its immediate liberation and an easy solution of conflicts of law, — these constitute the judirical and practical work resulting from the efforts made at the initiative of the International Maritime Committee which has little by little taken shape in the successive draft-treaties elaborated for these last ten years. Thereby, we stick to the traditional idea of continental law, but it is infused with new power by giving it a more scientific expression which unifies this law and puts an end to antiquated difficulties ; at the same time, it is corrected in a way more appropriate to the present requirements of trade, so as to limit as far as possible the impediments which litigations arising out of the accidents of navigation may put in the way of the maritime industry. We think that these essential features of the work now undertaken, must remain and we trust that unification shall be attained on this basis to the great benefit of the maritime industries and the credit of the International Maritime Committee.

ANNEX

Text proposed by the Writer of the Report

ARTICLE 1. — The rights and liabilities of the parties interested shall be regulated according to the provisions of the present convention,

a) When the vessels concerned belong to the contracting States,

b) In every case in which the national law shall have applied the provisions of the present convention.

ART. 2. — The owner of a vessel shall not be personally liable, but shall be liable only to the extent of the value of the vessel, of the freight and of the accessories of the vessel appertaining to the voyage, for damage or loss caused by the Acts of the Captain, crew or any other person assisting the Captain in the service of the vessel to

1° the goods, merchandise or other things whatsoever on board such vessel;

2° another vessel and to the goods, merchandise and other things whatsoever on board that vessel.

3° dikes, quays and other fixed or movable objects on the coasts.

ART. 3. — The freight mentioned in article 2 is the hire or freight or passage-money coming to the owner of the vessel even if prepaid, under deduction of..... (percentage) as repressenting « a forfait » the charges which are proper to same.

The accessories mentioned in art. 2 are:

1° Contributions due to the owner of the vessel for general average losses in so far as such losses constitute material damage sustained by the vessel but not yet repaired;

2° Damages due for the repair of any injury sustained by the vessel.

3° Sums of money coming to the shipowner for salvage.

Money due or payable in respect of contracts of insurance, premiums, subvention or other national subsidies shall not be considered accessories of the vessel.

ART. 4. — If there exists in favour of creditors any right of priority on the vessel or freight with regard to which no

limitation of liability is permitted, the shipowner shall be liable personally to make up the amount forming the limit of his liability by a payment equal to the sum for the recovery of whichsuch creditors may avail themselves of their right of priority.

ART. 5. — The shipowner may substitute for the vessel its value at the end of the voyage or the total sum realized in case of a sale pursuant to the order of a Court.

ART. 6. — In every case the shipowner shall have the right to obtain the release of the vessel, the freight and the accessories mentioned in article 2, by the payment of an amount limited, for each voyage, to eight pounds sterling or its equivalent.

ART. 7. — The voyage shall be deemed to be at an end after the complete discharge of the merchandise and passengers on board at the moment when the obligation arose.

If the value of the estate forming the guarantee of creditors, as determined above, is diminished by reason of a new voyage or by an act accomplished by the shipowner in his own interest, he shall be personally liable for the amount of such diminution, and in no case he shall be liable for more.

ART. 8. — The preceding provisions shall not prejudice the right of the creditors to seize the vessel at a port of call even before the end of the voyage. The bail given to obtain the release of the ship shall not be affected by subsequent events.

ART. 9. — The preceding provisions shall apply to liabilities arising out of an obligation to raise the wreck of a vessel whether the wreckage was occasioned by the fault of the Captain or not.

The creditors in respect of damages alluded to in the preceding provisions have no claim against the managing owner of the vessel if he is not the actual owner of same.

ITALY

ITALIAN ASSOCIATION OF MARITIME LAW

REPORT

on the Draft-treaty relating to

Limitation of Shipowners' Liability

by a special Commission composed of : Messrs R. ZINGARELLI, advocate ; C. BETTOCCHI, advocate, professor of Common Law at Naples and F. Mirelli, Judge at the Court of Appeal Naples (*reporter*).

A question of the highest importance which is debated by jurists and agitates maritime circles is : to what extent shipowners are to be liable towards third parties.

Since a long time, it has been recognised that this liability and the obligations of the shipowner, especially those resulting from the acts of the captain, must be limited ; before all in case of collision.

The International Maritime Committee, the object of whose labours is the unification of maritime law, has pointed out the necessity to consider this important question, in order to make away with conflicts of law which are unavoidable under the diverging systems which regulate shipowners' liability in the various countries.

The studies presented by the different national Associations and the discussions which have taken place at the international Conferences which have been successively held, since the meeting of Brussels, in the year 1897, up to the Conference of Liverpool in June 1905, have shown that if on the one hand, jurists do not quite agree as to the principles which should be applied, they are, on the

other hand, all convinced that there is a real necessity to try to arrive at a general understanding which is required by modern maritime life.

The ever-increasing development of maritime trade does not allow that the shipowner should have the burden of a liability for the acts and faults of persons whom, in most cases, he does not know, and of whom there is but a very limited choice. It occurs often that the Captain is replaced in the course of the voyage by another one, whom the shipowner cannot know at all; he merely receives an intimation of the change and is placed thus before an accomplished fact. As a rule, the shipowner cannot chose the man to whom he wishes to entrust the managment of his vessel, but must be content to find him among those who have the certificate required by law.

Now that the efforts of juridical science have obtained that one of the most important States of Europe has admitted the principle : that there is no liability when there is no negligence in the in choice of the servants, whilst in other countries the liability of the employer for the acts of his employee remains unlimited ; that doctrine and jurisprudence in several States admitted that with regard to civil liability of the shipowner, the national law only must be applied ; that to the contrary in other States they have renounced to apply the *lex fori*, — then the questions arises for the shipowners : in what way shall be regulated the juridical connections which may come to existence by the acts of the person to whom the shipowners have been compelled to entrust the direction of their ship, which very often represents an important capital and the fortune of many people ; this is also the reason why all those parties, who may happen to have interests in conflict with the interests of the shipowner, must evidently know in what manner shall be regulated the judicial connections arising out of the acts and liabilities of the Captain and

other persons employed in the service of the ship.

In doctrine and in practice, it has been observed how great is the difference existing between the continental and the British system as to the way in which the shipowners' liability is considered ; and as we must not deceive ourselves; the way in which we are to settle those juridical relations must be in conformity with the practical requirements of commerce ; now, when we consider that the British merchant fleet amounts almost to one half of the marine of the whole world, it is quite evident that without the co-operation of England, it will be impossible to unify maritime law.

On the other hand, we cannot complain if the British shipowners refuse obstinately to accept the continental system, and if they will not abandon the principles promulgated by their own laws and when they desire that serious consideration be given to those principles in an international agreement, in order that they be not handicapped by foreign shipowners.

It is impossible to pretend that the laws of one country shall be modelled on the laws of another country, or that one State shall have to accept the laws of another one, even if they should be the most perfect. In order to make away with the conflicts existing between the various legislations, it is necessary to proceed with much patience, and to « prepare the ground step by step » as Mr. Hindenburg expressed it in his Report for the Amsterdam Conference.

The International Maritime Committee has very well taken up that task by preparing draft-treaties which, by way of reciprocity, permit to apply uniform rules on the same subject ; this will by process of time persuade to introduce or modify legislative provisions in the States which have not hitherto in their laws rules simular to those embodied in the treaties, so that they come at last into line with the other States.

That is the reason why it is necessary to have uniform provisions applying even with regard to the Shipowners' Liability, and to find some way in which an agreement between the various *criteriums* or legislative systems might be arrived at according to the progress of the theory of responsibility and also of the necessity which is now recognised by juridical practice in all countries, to limit this liability, especially as far as the shipowner is concerned and to affirm and express this theory by clearly separating the « fortune de mer » (estate at risk at sea) from the other property of the shipowner.

Without such conciliation, it is quite useless to attempt to make away with conflicts of law.

A single glance in the minutes of the proceedings of the conferences formerly held by the International Maritime Committee will suffice to show that this very difficult problem has been the subject of highly interesting studies, of earnest discussions between jurists and merchants, but without arriving to a solution which might satisfy everybody.

However, the necessity to arrive at an understanding upon this very difficult problem is recognised everywhere, even in England, and, as Mr. Franck observed in his preface to Bulletin Nr. 12, the statements made at the Liverpool Conference on behalf of the *Liverpool Steamshipowners' Association* are truly symptomatical as to the progress in the opinion of these who would not renounce to their own system of law.

The present state of legislation on the matter of Shipowners' Liability, and on the way in which such liability is regulated and limited, may be summarised in three systems:

1st **System.** — *System of freeing from liability by abandonment.* — The shipowner is personally liable for the acts of the master and of the crew for everything which belongs to the ship or to the venture; but he is entitled to free

himself from any liability by abandoning ship and freight. This system is adopted by several States of Europe, with the exception of Germany and the Scandinavian States, and by nearly all the South-American States.

2nd **System**. — *Absolute limitation to the « Sea-estate »*. — The sipowner is solely liable on ship and freight; the liability of the shipowner is exclusively compassed by the property which is at risk at sea; every liability is restricted within these limits; it disappears if this property is lost; the creditors of the vessel have no other action than against the ship and the freight which represent their sole guarantee. This system, which nearly answers the doctrine of all countries, and to the traditions of the Middle-Ages, which is also embodied in the « *Consulat de la Mer* » and the compilations of that period, is adopted by the German Code and by the Scandinavian legislations; it is also accepted for the greatist part by the United States of North-America, where the shipowner may escape any cleam by having a representative of the ship appointed.

3rd **System**. — *The British system*. — The shipowner is personally liable for the acts of the Captain and of the Crew; but his liability is not admitted in certain cases, and is limited in other instances. Since 1734, liability is limited according to the *presumed* value of the ship *before the accident* for damages caused either on board the ship, or to another ship, to the cargo or to the persons on board. This presumed value is £ 8 per ton register in case of damage to property, and it is fixed at £ 15 in case of personal injury; and within this limit thus fixed at a lump sum, the shipowner is liable, whatever be the condition of the ship.

But, as this value may be claimed for each accident separately, when a vessel meets with several accidents during one single voyage, her owner stands out to the risk

to have to pay much more than the amount actually represented by ship and freight.

It is not the time now to examine and to discuss the inconveniences which these different systems represent for the various legislations. But to arrive to the object of limiting the liability of the shipowner, and to render more easy the task of obtaining application of uniform provisions with regard to shipowners' liability, it is necessary to find out some means of compromise between the two systems which are respectively kwown as *British system* and *Continental system;* the first one proclaiming that the liability of the shipowner is limited to the *maximum* fixed by law for each accident; the second one which reduces the liability to ship and freight with the distinction of the right of *abandonment.* (Italian, French and similar Codes of Commerce), or the absolute *limitation in rem.* (German and Scandinavian codes).

It is therefore necessary to find a middle-way so as to conciliate these two systems and which may amalgamate the British system with the continental system in this sense that the general rule will be that the shipowner shall be liable with his « sea estate » (fortune de mer) according to continental law; but that the shipowner shall have, up to the time of actual payment, the option to free himself from all liability by payment of a sum of money fixed according to the British system.

Since the very first conferences organised by the International Maritime Committee, the idea of superposing the British system has always carried much votes and the French Association has contributed for a large share indeed, to facilitate the work of the International Maritime Committee, by finding out this middle-way, in order to make away with conflicts of law as to liability of shipowners.

At the Amsterdam Conference, it was felt still more

strongly how necessary it was to find a compromise between the British system and the Rules in force in the other countries, and at the Liverpool Conference, in June 1905 (as Mr. Franck observed in his preface to Bulletin Nr. 12), it was pointed out very clearly that in conflicts between British law and the legislations of the other States, the main solution proposed by the London Conference of 1899 was gaining more and more room in the opinion of business-mer.

It would be vain to hope that on such questions, theoretical discussions could be avoided, and as the Italian Association observed in their report sent in to the Committee in view of the Amsterdam Conference, it is not possible that the fundamental principles of every country's own law may prevail upon the principles of the other legislations in the elaboration of an international agreement, and that finally the one will have the better of the other.

On the contrary it is necessary to take into account the advantages of the various systems which are now ruling, the tendencies of doctrine accepted by the most modern maritime legislations which admit a liability of the shipowner exclusively limited to the « sea-estate »; it is necessary to compound those advantages, those tendencies and the systems which are now in force in an equitable formula which may give satisfaction to everybody.

This task was entrusted to the Sub-Committee appointed at the Liverpool Conference and is summarised in the draft-treaty on Limitation of shipowners' Liability which is going to be discussed at the next Venice Conference and which it would be well to accept in general, under reserve of the remarks which we beg to move already here and those which will be made during the discussions of the draft-treaty at Venice.

This draft-treaty represents a considerable progress and it constitutes a basis of compromise for harmonizing and

amalgamating opposite tendencies. The main idea of the draft-treaty is that the liability of the shipowner is of a wholly peculiar character; it is restricted to the fact that the ship herself is liable, but not the person of her owner.

Article 2 of the draft-treaty affirms exactly this principle which is the basis itself of the Continental system, by excluding the « property on shore » and by limiting the liability of the shipowner solely to the « property at sea », viz to the ship, to the freight and the accessories of the ship appertaining to the voyage.

The draft-treaty gives to the shipowner the option between the abandonment as provided by the French code and other similar legislations, and the German-Scandinavian liability, up to the value of the vessel, but granting to him at the same time the right to free the vessel, the freight and the accessories of the ship appertaining to the voyage by paymeut of a sum fixed according to the British system.

However it must be observed that the draft-treaty does not settle the whole of the question of liability; it merely settles the liability for damages to property and merchandise; articles 2 and 6 clearly show how far the draft-treaty goes; everything which refers to personal injuries is left untouched by the draft of treaty. So, the latter handles not the whole question of liability, but merely a part of it. Damages caused to persons, personal injuries, will, of course, be the subjet of another draft-treaty.

Now, as regards the draft-treaty under consideration for the time being, we cannot fail to offer the following remarks:

Article 2 mentions the *accessories of the ship*. It would be well to explain what is meant by this expression: *accessories*.

It would be necessary to include everything contained in the ship. Because, if the liability of the shipowner shall be limited exclusively to the « estate at sea » it is but just that everything which is an accessory to this estate,

or which belongs to same, even temporarily, shall be included within the property which is to guarantee damage and losses caused by the act of the Captain and his assistants or of the persons in the service of the ship. Therefore, we ought to include in the accessories the supplies, ornaments, objects of luxury and of art which are on board to ornament the ship, and any similar objects serving to furnish the vessel, even if they should not be directly necessary to the voyage.

The same article 2 refers to the liability of the shipowner but only for *damage or losses caused by the acts of the Captain or the crew, or of any other person assisting the captain in the service of the ship.*

This wording shows that it was meant to allude to the question of pilots and to solve same.

Mr. Marghieri and Mr. Hindenburg, in their reports presented respectively on behalf of the Italian and the Danish Associations in view of the Amsterdam Conference, on the matter of Shipowners' Liability, alluded to the question of the liability of the shipowner for the faults of the pilot, and they observed that the wording adopted in the draft-treaty decided the point.

One should say that the terms of article 2 which we examine refer to the pilot, the words *of any other person assisting the captain in the service of the ship* including also the pilot. But if any doubt was possible on this subject, it would be necessary to explain it better.

Then, the pilot, even when compulsory, is always an auxiliary of the captain, engaged temporarily in the service of the vessel, in order to avoid damages to same and also to other vessels which might be encountered in dangerous quarters, and in order to diminish the causes of liability for the shipowner.

In France and in Italy, doctrine and jurisprudence have recognised that the full liability of the captain is not

excluded by the fact that there was a pilot on board, even if his presence should be necessarily required and compulsory. The pilot only adds his special knowledge of dangerous parts to that of the captain himself; but the command of the ship always remains in the captain's hands who is bound to oppose any manœuvres ordered by the pilot when he perceives that some danger menaces the vessel (art. 107 and 202 of the Merchant Marine, art. 504 of the Italian Code of Commerce; art. 227 of the French Code of Commerce). The presence of a pilot is a precaution imposed for the sake of the safety of the ship, of the persons on board, and of the cargo, and also for the safety of other vessels which might be met with in dangerous parts. If the Captain neglected or refused to avail himself of the assistance of a pilot, he would be penally responsible for the consequences of such neglect or refusal, for having exposed to danger his vessel and those on board of same; but it is always the captain who remains on board for the command of the vessel, wilst the pilot is only a guide who gives him advice in the service and for the benefit of the ship.

The owner of the ship must therefore also be liable for the acts of the compulsory pilot, for, although not properly belonging to the crew, he is nevertheless working in the service and on behalf of the ship.

We deem it necessary to make a second remark with regard to this article 2 of the present wording of the draft-treaty.

In the draft-treaty presented to the Amsterdam and to the Liverpool Conference, they did not only refer to the acts of the captain, but also to « *the liabilities entered into in virtue of the legal capacity of the master* ». After the Liverpool Conference, they suppressed this wording for the new draft-treaty, and they merely mentioned damages or losses caused by the act of the captain, etc.

The Italian and the French Association observed in their respective reports presented in view of the Amsterpam Conference the fact that since the London Confeference (1899), they included within the draft-treaty on Limitation of Shipowners' Liability not only the *acts* of the master and crew, but also the *liabilities* entered into by the master in virtue of his legal capacity.

Article 491 of the Italian Code of Commerce, and article 216 of the French Code of Commerce consider and treat separately those two cases of responsability : that which depends from the *acts* and that which is the consequence of the engagements entered into by the master ; the liability of the shipowner is recognised in both cases and he is bound to bear the consequences thereof. The same system is followed by the German Code (art. 486-754) and by other European legislations.

The text of the former draft, which was presented to the Amsterdam Conference, and also to that of Liverpool, was positive on that point ; it considered two hypothesis of responsibility and it excluded any further discussion. Now it seemed that the new draft-treaty in order to cover the whole of the liability question as one would deduct from the wording of article 1, and as is explained and justified in the Summary of the Discussions contained in the Report of Messrs Hennebicq and Sieveking, printed in Bulletin Nr. 13 of the International Maritime Committee, article 2,— only mentions the *acts of the captain and crew*, and the words « *liabilities entered into in virtue of the legal capacity of the master* » which were in the draft submitted to the Liverpool meeting, are suppressed.

We read in the Summary of the Discussions the following : « The modification on article 2 is a *purely formal* » *one*, as the German system of limiting the shipowners' » liability is adopted as a basis for the whole draft-treaty » and that articles 5 and 6 allow the shipowner to free

» himself from this liability by payment of the value in
» money.

» The words « Acts of the Captain and crew » do not
» only include nautical faults (wrong navigation) but also
» all other acts which might involve any liability for the
» owner. The article is therefore in conformity with the
» Liverpool draft ».

Therefore, if article 2 includes also the liabilities entered into by the Captain in virtue of his legal capacity we think this article of the draft-treaty may be accepted ; but if it is considered that this wording can leave room for doubt, we think it would be necessary to explain it better and to include also this question of liability which is of the utmost importance, which is of very great interest for international maritime trade and for which the most modern maritime codes have deemed it prudent to protect the shipowners.

We ought further to point out a remark made by the Italian Association of Maritime Law in its Report to the Amsterdam Conference.

The new draft, as well as the former one, only alludes to liability of the shipowners. Now, under this name, is meant not strictly the owner of the ship, but only the managing owner, and the latter may even be the person who undertakes maritime trade with a vessel not actually belonging to him.

Another remark on article 2. Under Nr 3 of said article, the draft mentions « *damage to dikes, quays aud other fixed objects* ».

It would be advisable to include in that specification as well docks and basins as such floating objects which are to be found in the vicinity of the coasts and in the ports. In fact, they are things and objects which are set out to the risk of collision and to damage by the fault or by the inexperience of the captain or of the people in the

service of the vessel; and there is no reason why they might be excluded as regards the consequences of the shipowner's liability.

On article 3. — The Association observes that premiums to navigation, subventions and other national subsidies have not been considered as accessories of the ship.

If the Genoa-Conference (1892) has stated the principle that even insurance indemnities form part of the « patrimony » of the ship, there are still many people who doubt whether this principle be right; then indemnities paid in virtue of contracts of insurance solely depend upon relations existing between underwriter and insured. If we are to limit the liability of the shipowner solely to the « sea-estate » it is but just that everything which forms such estate shall serve to guarantee third parties. The premiums allowed to merchant ships have a political-industrial object; they tend to assure that there be a numerous and able staff for shipbuilding and ship-repairing, in time of peace as well as in a period of war, and also for the service of the ships.

Nevertheless, they are fruits of the vessels, and they are among the profits which the shipowner draws from the navigation. If premiums cannot be assimilated to freight or blended with freight, and if we cannot consider them as being accessories of freight, it is on the other hand true also that the ship voyages with those premiums for shipbuilding and premiums for navigation; they in fact represent an accessory following everywhere the object to which they refer.

And as the shipowner is not liable personally, but solely on his vessel, it would not be fair if he could keep aside premiums, subsidies and subventions which are given him for the sake of the ship, and outside of the estate which he employs in the maritime venture.

Article 5 reads as follows: « *The shipowner may substitute*

for the vessel its value at the end of the voyage, or the total sum realised in case of sale pursuant to the order of a Court, before the termination of the voyage ».

In this latter case, the report of the surveyor, or the public auction legally effected, give the actual proof of the value, and the question cannot be further discussed. But how shall this value be ascertained in all other cases ?

This doubt was also expressed by the Belgian Association and the latter proposed, in its Report presented to the Amsterdam Conference, that in the case where the shipowner should chose to pay the value of the vessel, the valuation of same may be fixed « contradictorily at the request of the most diligent party. »

It is necessary that there be a rule for the fixation of such value; it cannot do to be dependent on the goodwill of the owner. However it might be possible to allow the shipowner to follow some proceedings similar to those provided by article 106 of the French code of commerce, 71 and 413 of the Italian code of commerce in case of survey of the objects sold or carried, and to cause, at his expenses and at the very spot at which he wishes to make use of the option provided in article 5 of the draft, a survey under the supervision of the Court to be held in order to ascertain, if possible contradictorily with the other party, the value of the ship. Such survey ought to have its effect also as against third parties.

Article 6 concerns the right of option. — This inflexible rule, as Mr. de Valroger remarked in his report to the Amsterdam Conference, does not make any distinction between the several categories of vessels and steamships, and it cannot, of course, escape criticisms. But on the other hand, many reasons of opportuneness counsel to adopt this main term, which allows the shipowner to free himself from any liability by substituting to the vessel and

her accessories a lump sum fixed aforehand for every voyage.

Article 9 makes clear that, whether there be or be not a fault on the captain's side, the obligation to remove the wreck comes within the liability of the shipowner. And this is but fair. Very often, requirements of navigation render it necessary to remove the wreck of a ship thrown upon her side or sunk, and the expenses of raising such wreck must be borne by the shipowner, who shall add them to the other losses he suffered.

Now, as all rights and liabilities are included in the provisions of the draft-treaty, the raising of the wreck also must come within those provisions.

However this obligation should only have to be limited in the case where the wreck can be raised, or, to explain it better, when it became necessary to raise the wreck, pursuant to an order of the authorities ; then it were not reasonable to oblige a shipowner to remove a wreck which has become quite useless to him and which does not cause any hinderance for the free passage and for the safety of other vessels.

The second part of article 9 provides that the provisions of the draft-treaty do not apply to the liability deriving from the personal faults of the shipowner, and this again is but equitable ; then we come again within the general rule of unlimited liability for the obligations entered into directly by the shipowner himself and carried out by him.

If it may seem fair to procure some guarantees and to treat with much indulgence him who is obliged to entrust his property to another person, whose management he cannot control, — we could, of course, not admit any exoneration or limitation or liability for the personal acts of the shipowner, for which the latter must himself consider and measure the consequences of the acts committed and the liabilities deriving therefrom, either by acting wrongly or by negligence.

For instance, if he had neglected to supply the ship with the necessary fuel when sending it on a voyage ; if he had refused to supply means of safety (life-boats, &c.)

In such case, it is accepted everywhere that the shipowner is not entitled to abandonment where abandonment is admitted ; he must bear himself the consequences of his act and of his personal liability, In such cases of personal and direct faults, no limitation whatever of limitation is admissible.

Article 9, 2nd paragraph, generalizes that which is already admitted by doctrine and jurisprudence in Italy and in other countries, and expressly provided by article 774 of the German Code.

But some legislations, such as Italian law (art. 491 of the Italian code of commerce) ; and French law (Art. 216 of the French code of commerce) do not allow the option of abandonment to the person who is at the same time captain and owner or joint-owner of the vessel.

Now, the first instance, viz when the owner of the vessel is at the same time the Captain who commands the ship, may be considered as being included in the second paragraph of article 9, because it concerns in that case the consequences of his own acts, and there must be an unlimited liability.

But the case has not been foreseen where the captain is a joint-owner of the vessel ; and in that case, as the right of abandonment is not allowed, we should not even admit the application of the rules contained in the draft-treaty, especially for the consequences of the fault committed by the captain who is joint-owner. The Association pointed out this in its Report to the Amsterdam Conference : and thinks it necessary to come back again on that point, now.

The « Remarks on the Principal Resolutions » by Messrs Hennebicq and Sieveking, published in Bulletin Nr. 13 of the International Maritime Committee, allow us to dispense with more ample remarks on the draft-

treaty which, as we already observed, constitutes a considerable progress, though it still is incomplete.

We cannot conceal that the question always remains very weighty as regards personal injuries, especially now that the carriage of emigrants has given raise to a series of very important disputes.

The moment has not come yet to examine same; be it sufficient to point them out in order to indicate that the carriage of emigrants offers a further cause of conflicts of laws and jurisdictions.

Very recently, in Italy, very weighty and very ticklish law suits have been carried on before special jurisdictions between emigrants and those who make a profession to carry them; it has been a matter of discussion whether the special Emigration Bill has created a new common law for the emigrants, which is to replace, as towards them, the provisions of the Codes; it has been discussed before a magistrate who is not the ordinary one, whether the option of abandonment must be considered as extending or as not extending to those people who undertake transports of emigrants.

These are the reasons why it is not possible to drop this question of liability for personal injuries, which deserves full attention, especially on account of the very important consequences it involves, and we beg to express the hope that the assiduous and intelligent labours of the International Maritime Committee will extend themselves to that question as soon as possible.

Naples, May 1907.

F. MIRELLI, *Reporter*.

NORWAY

NORWEGIAN ASSOCIATION OF MARITIME LAW

REMARKS

on the Draft-treaty relating to

Limitation of Shipowners' Liability

ARTICLE 1

a) The result of the proposition, such as it formulated, shall be that in the same country, different legislative provisions shall have to be applied, according as there will be a suit pending between parties belonging to the Contracting States or a suit between subjects of such States as would not have adhered to the treaties.

b) The draft-treaty would not much diverge from the legal provisions ruling in Norway, if the declarations mentioned below are accepted by the Conference.

ARTICLE 2

In principle, this article is in harmony with Norwegian law. The latter, however, in its articles 7, 2 and 8 exonerates the shipowner from his personal liability to a much larger extent than is done by the draft-treaty proposed ; whilst on the other hand the claimant who is only entitled to compensation on the ship, the freight and the accessories, is, according to article 268 of the maritime law, entitled to a maritime lien for his claim.

Art. 268 — The following claims shall have a lien on ship and freight :

1. Pilotage, salvage and expenses laid out for assisting a ship against enemies.

2. Claims of the captain and crew for wages and any other remuneration to which they are legally entitled for service on board the ship.

3. Claims for General Average contribution and other expenses to be apportioned according to the same rules (art. 161, 2nd section, and article 218, 2nd section) claims for bottomry and claims of the cargo-owners for merchandise sold in the course of the voyage for the needs of the vessel.

4. Claims arising from the liabilities entered into by the captain in virtue of his legal capacity, or resulting from non-execution of contracts concluded by the shipowner or by his attorney, but whose excution comes within the legal capacity of the master (See art. 7); indemnities for damage caused by the default or negligence of a person on board employed in the service of the ship (see article 8); and the claims of the captain for moneys paid by him, or which he bound himself to pay, in order to cover the expenses of the ship.

A maritime lien on the ship shall also bear on the rigging, but not on the supplies, fuel, coals or other supplies of the engineer. A maritime lien on the freight shall bear on the gross freight of the voyage during which the claim has come to existence. The maritime lien for bottomry loans shall bear on the ship, or on the freight, or on both, according as shall be provided in the bottomry bonds (see art. 175).

Art. 269. — The claims in favor of which a maritime lien is granted according to art. 268, shall rank in the order of the enumeration, as far as they relate to the same voyage. Claims mentioned under the same number, shall

have equal rights, in such manner however that if claims enumerated respectively in categories 1 and 3, have not arisen from the same accident, the last claims rank prior to that of a former date.

If the various claims relate to different voyages, these which relate to a latter voyage shall rank prior to those which relate to a former voyage, but the captain and the crew shall continue to have a right of priority for the amount of their wages on the last engagement, for a maximum period of twelve months, even if during that period, the ship effected several voyages.

BELGIUM

BELGIAN ASSOCIATION FOR UNIFICATION OF MARITIME LAW

Draft-treaty on Limitation of Shipowners' Liability

REPORT

of the Belgian Sub-Committee composed of Messrs Alph. Aerts, Walther Blaess, Charles Bauss, Louis Franck, Franç. Génicot, Jacq. Langlois, Charles Le Jeune, Germain Spée, Léon Van Peborgh, F. Willemse.

GENERAL REMARK

The Commission has considered that after the considerable work represented by the draft-treaty submitted to its examination, and considering that in such matters, it is necessary to take into account the often very contradictory ideas which have inspired the national legislations now existing, it was advisable not to propose to the text adopted by the Paris Commission other alterations than those which appear as indispensable and which seem of such nature as to meet with unanimous approval.

Article I

We understand that this text depends chiefly on the Diplomatic Conference which shall have to examine the draft-treaty.

ARTICLE 2

The text of this article did not give raise to special remarks ; unless on the two following points :

The article mentions damages and losses caused « to another vessel, to goods, merchandise and any other objects whatsoever on board such ship. »

A member asked whether it was not to be feared that this text might be construed as excluding causes of damage which (like detention of the vessel after a collision) attain the industry of the shipowner rather that the ship herself as such.

To this it has been replied that the expression adopted in all the draft-treaties means by « the ship » the whole of the interests on hull, and included therefore all damages recoverable without distinction between material damage and loss and more general sources of damage, such as for instance, detention, extraordinary expenses, &c.

The text of the article, under 3°, also mentions dikes, quays and other fixed objects.

The Belgian Commission suggests that it might be better to replace this text by the following one :

3° to navigable water-courses, dikes, quays, bridges, pontoons, floating docks, works of art and other floating and fixed ohjects ».

ARTICLE 3

The following remarks have been made :

If the gross freight is to be abandoned, it must be understood that it shall be the sea-freight, i. e. the freight of the ship or relating to the voyage accomplished by the ship herself, and not the price of the carriage by land, which, for through-bills of lading and unified tariffs, is very often mentioned on the bills-of-loading.

This is course, is beyond any discussion.

To the 2° of this article, it was observed that the indemnities due on account of damages suffered by the ship can only be abandoned as far as repairs should not yet have been effected.

ARTICLE 4

No remarks.

ARTICLE 5

No remarks.

ARTICLE 6

No remarks.

ARTICLE 7

It has been observed that the wording of this article might give raise to misconstruction, in this sense that it might be contended that the second paragraph, where it is stated that « the risks of every subsequent voyage are to be borne by the shipowner », would create an unlimited liability. It may be considered whether it would not be better to word article 7 as follows : « The voyage shall be deemed to be at an end after complete discharge of the merchandise and passengers having been on board at the time when the liability has arisen, but so that the risks of any subsequent voyage may in no case diminued the security established by the preceding articles ».

ARTICLE 8

At article 8, it is proposed to word the second paragraph as follows :

« Bail given in order to obtain release of the vessel when

arrested shall not be invoked in order to diminish the liability resulting from subsequent voyages and shall in no way be affected by the latter ».

ARTICLE 9

One of the members put the following question : whether by « wreck » is meant in a general way any ship stranded, sunk or abandoned by her crew, even if there was a materiel possibility to float it again. The Commission has been of opinion that the word « wreck » must be understood in a broad sense.

HUNGARY

HUNGARIAN ASSOCIATION OF MARITIME LAW

Draft of international treaty relating to

Limitation of Shipowners' Liability

prepared by the Paris Commission

REPORT

BY

Dr. ANTONIO VIO

ARTICLE I

This article did not exist in the draft-treaty adopted at Liverpool, but has been added subsequently by the Paris Sub-Committee, of 1906.

The latter examined the question how the draft-treaty under discussion would be put into execution, — whether it should be by way of treaties to be signed between the various States, or wheter this should be effected by accepting the draft-treaty in the various national legislations ; and the Commission proposes to adopt both modes simultaneously, declaring that the provisions thus adopted, shall apply :

a) when the vessels in litigation shall belong to the Contracting Statee ;

b) in every case where the national law shall have rendered applicable the provisions of this Convention.

So it is quite evident that by adopting this principle, maritime law, instead of being more uniform and more simple, shall become still more difficult and more intricate.

Let us suppose, for instance, that a vessel, belonging to a State having adhered to the Conventions, comes into collision with another vessel belonging to the same State, or to another State having also signed the conventions, and that the latter vessel in her turn collides with a third vessel, belonging to a State not having adhered to the Convention ; in such case, the same matter shall have to be judged according to two different laws.

Suppose now that on board these three vessels, there are merchandise belonging to persons of various nationalities and that in consequence of the same collision, such persons have an action for liability against the one or the other vessel, — what shall be the law to be applied, among the differeut contending systems ? It is quite apparent that in such case, the confusion will still be greater.

It seems therefore an absolute necessity that the States adhering to the convention, introduce the provisions of the draft-treaty under discussion into their national legislation, entirely and without reserves.

ARTICLE 2.

This article reproduces part of the wording of article 1 of the draft-treaty adopted at Liverpool, and deals with the question in what cases the limitation of shipowners' liability shall apply.

According to certain legislations, the limitation of liability applies for the damages resulting :

a) from the default of the captain and crew ;

b) from contracts entered into by the captain in virtue of his legal capacity ;

c) from contracts entered into by the shipowner but whose execution lies within the legal capacity of the captain.

In the draft-treaty prepared in view of the Liverpool Conference, the case mentioned sub. c) was excluded from the limitation and the Liverpool meeting adopted the same resolution as regards the causes sub. b).

According to this resolution, the shipowner should therefore be personally liable and without limit, not only for the claims resulting from the causes enumerated under c) but also.

1. for the liabilities entered into by the captain in order to be able to complete the voyage (cost of repairs, purchase of coal, provisions, rigging, &c).

2. for salvage and assistance-indemnities, even if the ship should be completely lost.

This is contrary to the principles which are always admitted and to the legislations of most of the maritime States.

Suppose a vessel to have collided and to have afterwards resorted to maritime assistance, and that the premium due for salvage, added to other eventual claims having a lien, should amount up to the whole value of ship and freight. In such case, if we were to accept the Liverpool resolution as related above, the shipowner should have to sacrifice ship and freight in order to pay out the salvage indemnity and the other privileged claims, and he should be further liable, on his property on shore, for the claims arising out of the collision ; or, if the claims resulting from this accident were covered by the value of ship and her accessories (including freight), he would be personally liable as towards the privileged creditors up to the value of ship, freight and accessories (Art. IV).

This would mean a very heavy burden for the shipowner.

Therefore, even if we were not to admit limitation of liability for the causes mentioned sub. c), still it would seem proper to extend this limitation of liability, outside of the causes sub. b a) also to claims mentioned sub. b b) and especially to claims relating to the maritime venture, to which relate the loans made by the captain in order to insure the safety of the vessel or to complete the voyage, for salvage and assistance-indemnities, or for General Average contributions.

This was the view adopted by the German Association of Maritime Law, although the Chamber of commerce oi Hamburgh had declared their agreement to exclude from the limitation of liability all claims deriving from contracts entered into by the Captain, with the exception only of indemnities for assistance and salvage.

The Paris Commission as it seems. wished to include within the cases where limitation of shipowners' liability should apply, the facts sub a) and sub b), as they were of such nature as to come under the terms : « caused by the *acts* of the captain », not only the case of fault, but also the contracts entered into by the captain. »

When examining further this article 2, one may observe that it considers only damages caused to inanimate objects (ships or merchandise) but not personal injuries, so that for the latter the shipowner shall remain personally liable. But, as in the various countries, diverging provisions are in force on this question, it would be highly desirable if we could succeed to settle it also in a uniform way.

Here also arises the question whether the shipowner shall be liable for direct damages only, or whether be shall also be responsible for indirect damages (loss of profit).

In the draft-treaty submitted for examination, it is

stated .. « damages or *losses* caused to goods, merchandise, &c. »

The Chamber of Commerce of Hamburgh construes this as meaning that indirect damages shall be excluded, because the word « losses » refers to the words « to ships, to objects ».

The German Association of Maritime law, to the contrary, thinks that this word « losses » included also indirect damages.

Therefore, this part of the article under discussion ought to be rendered more clear : If it is meant that it shall include only direct damages, the shipowner shall not be liable ; if, on the other hand one should deduct from this wording that the shipowner's liability is limited for direct damages, but unlimited for indirect damages, this would surely be absurd.

Then it must be remarked that Article 5 of the draft-treaty on Collision, approved by the Hamburgh Conference, also admits indirect damages ; now if the one or the other solution is to be adopted, care must be taken in any case that there be complete conformity between the two draft-treaties on that point.

At the words « or of any other person assisting the captain in the service of the ship » arises the question whether among those persons must be included also the crew of the tug and the people who are employed for the stowage.

The Hamburgh Chamber of Commerce proposed to exclude those persons, but the German Association again, by 12 votes against 10, opposed the exclusion of the tug's crew, and on the other hand, by 20 votes against 2, decided to insert a paragraph by which the persons employed for stowage should be expressly excluded. Furthermore, it was decided to replace the words « assis-

ting the captain in the service of the ship », by the words « employed in the service of the vessel », and to add to Nr. 3 (« to dikes, quays and other fixed objects ») the words « or floating » so as to include therein « floating docks ».

We approve these additions.

Article 3.

This article deals with the questions contained in the second part of article 1 of the draft-treaty adopted at the Liverpool Conference, and explains what is meant by « freight and accessories, » of article 2.

The Liverpool Congress had decided that the shipowner should be liable on the net freight only.

The Paris Sub-Committee, to the contrary, has said, like the German Association, that it would not be very fair to limit the liability to the net freight, and that in order to render calculations easier, it would be preferable to include in the liability the whole of the gross freight. On this account, the proposal of the Paris Sub-Committee seems acceptable.

According to the terms of this article, the accessories of the ship shall therefore be :

1. The indemnities due to the shipowner for General Average, in as far as such indemnities represent damages suffered by the ship and not yet repaired.

2. The indemnities due for compensation of damages whatever sustained by the ship.

3. The sums payable to the shipowner for assistance or salvage.

The Hamburgh Chamber of Commerce proposed to exclude these accessories from the assets which are to to form the garantee of the creditors of the vessel, and this for the following reasons :

The underwriters only pay damages resulting from a collision against surrender of the regress against the ship having caused the damage. If this remedy should continue to exist in favour of the ship's creditors, the underwriter, who would not obtain the counter-prestation, would decline payment. This would, besides, be contrary to the last paragraph of article 3 which provides that indemnities due or paid by reason of an insurance, and for premiums, subventions and other national subsidies, are not considered as accessories of the vessel. »

It must also be observed that if we accept the draft submitted for examination, the creditors of the ship will be in a more favourable position if the ship should be lost through the fault of a third party, than when it sustains damage on account of a force-majeure ; that it is therefore in contradiction with the 1° and 2° of article 3 and with the last paragraph of that article and that, consequently, if we were either to exclude the indemnities referred to under the 1° and 2°, or to modify the last paragraph of article 3, we would deprive the creditors of the insurance indemnities.

The Hamburgh Chamber of Commerce advocates the exclusion of the indemnities under 1° and 2° of article 3.

Finally it is a principle from which we may not diverge, that the limited liability of the shipowner must bear on the ship and on the fruits of same.

So, if the ship has sustained damage, and if she is on that account entitled to an indemnity, or if the ship has acquired a right to a premium or indemnity for salvage or assistance rendered by her, it is but fair that the creditors of the ship, and those who have suffered a loss by reason of one of the events mentioned above, be paid out of the amount accruing to the shipowner as in indemnity for these accidents.

If we were to substract those amounts to the creditors of the ship, whose claim is already limited to the « sea-estate » of the shipowner, we would deprive them again of a part of the latter estate.

The contract of insurance concluded between the underwriter and the shipowner must not *modify in any way whatever* the rights of the creditors on the ship herself, or on the freight and its accessories.

The contract of insurance is a contingency-contract, concluded between the shipowner and the underwriters. And as the latter are obliged to indemnify the shipowner for the damage without any restriction, when such damage is the consequence of a force majeure, for the same reason, they will also have to refund damage when it is caused by another vessel.

So, it is more equitable that the right of indemnity of the shipowner as regards third parties, profits to the creditors rather than to the underwriters, and that such right shall only come to the underwriters in the case and in so far that there are no privileged claims on the ship.

Then, it must also be considered that a great number of contracts of insurance are concluded for the case of total loss or for losses of at least 75 %, whilst damages for losses caused to third parties may be claimed however small their amount may be. Why should, in such case, the creditors lose any right to be paid out of the indemnities accruing to the shipowner?

The German Association of Maritime Law adhered to the proposal of the Chamber of commerce to exclude from the estate liable towards the creditors, premiums or indemnities for salvage and assistance, as the Association considers that these amounts do not represent a fruit of the vessel; but it rejected unanimously the exclusion of Nr 1°

and by 12 votes against 7 the exclusien of the 2° of article 3.

In my modest opinion, we should only maintain the 3° such as it is proposed by the Paris Sub-Committee, the more as in most cases, in order to earn an indemnity for salvage or assistance, the ship herself which represents the sole, or at least the most important guarantee of the creditors, is set out to serious perils.

Therefore it could on no account be advisable to suppress to 1° and the 2° of article 3.

A question which has been very much discussed was whether we are to include in the accessories of the vessel, the produce of fishing, the returns of tugs, of vessels of harbour-police, of pilot-boats, &c. Logically, such amounts ought also to be included in the accessories mentioned in article 3, because it is quite evident that heir economical nature is the same as that of freight, in the exact sense of the word. But the Paris Commission decided to exclude them from article 3.

Article 4

The article corresponds literally to article 5 of the draft-treaty adopted at the Liverpool Conference. It has been approved by the German Association of Maritime Law in its meeting of September 7th, 1906.

Article 5

This article defines more accurately the principle contained in article 1, littera *a*) of the draft-treaty adopted at the Liverpool Conference (to the ship or her value at the end of the voyage, at the option of the owner).

Article 6.

This article is conform to article IV of the Liverpool draft-treaty. There is only an addition of the words « or to its equivalent » — probably with a view to the coin in use in the various States outside of England.

Article 7.

This article defines the word « voyage » and refers to the first part of the last paragraph of article I of the Liverpool draft-treaty.

According to that article, the voyage shall be deemed at an end when there will be no more on board any of the marchandise or passengers having been on board the ship at the time the liability has come to existence. This differs from what is provided by article 194 of the code of commerce in force in Hungary.

The Chamber of Commerce of Hamburgh proposed to consider as the end of the voyage the first port where the vessel has called after the occurrence of the accident which gave raise to the claims, on the following grounds :

That in the present conditions of trade, it is not at all easy to give to the term « voyage » a definition which may apply to the various circumstances of navigation ; that steamers of regular lines accept and take on board merchandise in any ports where they call ; that it is therefore impossible to ascertain exactly where the voyage actually commences and where it comes to an end ; that it even often occurs that when arriving at their home port, such vessels have still on board some goods shipped at a port of call, such goods being to be carried to another calling port ; so that, for third parties it is extremely difficult to know where the voyage commenced and where it shall come to an end ; and finally, that this definition of the

voyage turns out in fact to be of lesser importance, seeing that all creditors will have the option to arrest the ship at any port of call whatsoever.

The Chamber of Commerce of Hamburg therefore proposed that the freight referred to by article III shall only be the freight relative to the goods being on board at the time the claim came into existance, and to exclude consequently any freight for goods shipped before and for cargo carried subsequently, in the course of the same voyage (this being construed in the broadest sense of the word). On the other hand, the German Association pronounced, by 20 votes against 2 votes in favour of maintaining the definition of the « voyage » such as it is given in the draft of the Paris Commission, although they adhered to the views expressed by the Chamber of commerce with regard to freight.

Article III of the draft of the Paris-Commission is not very clear on that point.

ARTICLE 8.

This article was necessary in order to state that in case bail is given by the shipowner, subsequent accidents befalling the ship during the same voyage, shall in no way affect this first security given the the creditors.

ARTICLE 9.

The first paragrap of this article would be better at its place in article 2, where damages for which the shipowner is liable on his « sea-estate » (fortune de mer) only, are mentioned.

The second paragraph expresses the resolution passed at the Liverpool Conference, and codified in article 6 of the draft-treaty adopted at that meeting.

Final remark.

The final wording of this draft-treaty shall, of course, depend on the provisions which shall be adopted for the draft-treaty relating to Maritime Mortgages and Liens, as both drafts are closely connected with each other. In fact, every claims for which the shipowner shall be liable on his « sea-estate » (fortune de mer) only, ought to have a lien on the ship and on the freight. Finally, we are not at all in agreement with the Chamber of Commerce of Hamburgh when the latter pretends that towards all privileged claims, the shipowner shall only be liable on his « fortune de mer » ; because there are privileged claims (as for instance, wages of the master and crew, and others) for which the shipowner must also be personally liable.

Dr. Antonio Vio, advocate.

DANMARK

DANISH ASSOCIATION OF MARITIME LAW

Limitation of Shipowner's Liability

REPORT

of the Danish Sub-Committee, composed of Messrs. A. HINDENBURG, OTTO LIEBE, ADOLF CARL and VIGGO MIDDELBOE.

To the International Maritime Committee,

We have been requested to examine and to express our opinion on the two draft-treaties, relating respectively to Limitation of Shipowners' Liability and to Maritime Mortgages and Liens, also to answer the Questionnaire on Freight.

We are convinced that it is of the utmost importance to arrive at a uniform law; in our opinion, that uniformity is so desirable that we think it our duty to drop any objections we could have to put forward against the draft-treaties. For this reason we fully adhere to the drafts in question and beg to thank the Committee for their work.

However, since we are invited to do so, we beg to submit some remarks.

According to our maritime law (article 8), the liability of the shipowner is limited to ship and freight, for damages arising out of faults or negligence of the captain, of a member of the crew or of a person who, although not

being one of the crew, assists the captain in the service of the ship. This is the rule expressed in article 2 of the draft-treaty.

Under our law also (article 268) by freight is meant the gross freight of the voyage during which the claim has arisen. It is of no import whether the freight be prepaid or not.

We do not quite make out the meaning of the terms employed in article 3 of the draft-treaty « hire or freight » (or *loyer* ou *fret*), and namely whether the draft-treaty means by these words « hire » and « *loyer* » the remuneration which the shipowner receives in case of time-charter, whilst under the term « freight » the draft-treaty means the amounts paid by the shippers for the carriage of goods.

Under article 270 of our law, the indemnities due to the shipowner for damages or General Average, are considered as being accessories of the ship, but not so for the amounts coming to the shipowner for assistance and salvage.

According to article 7 of our law, the shipowner is personally liable for the wages of the crew. This is a exception from the general rule according to which the liability of the shipowner is limited to ship and freight. Whilst it is a rule that the creditor towards whom the shipowner is personally liable, has no lien, the case is different for the crew's wages. When the ship is sold upon arrest and compulsory execution, the wages of the crew are paid prior to other claims. The principle according to which the shipowners' liability is limited to the « fortune de mer » is complied with when the value of ship and freight has been exhausted to pay the liabilities of the shipowner. As the latter is personally liable for the wages of the crew, the consequence is that he must pay them out of his property on shore, when they cannot be paid by way of compulsory

execution upon the ship. But our law does not say that the shipowner shall in every case be liable on his « sea-estate » and beyond that, for the wages of the crew. The obligation of the shipowner to be liable personally for the wages of the crew is a special rule, contrary to the general priciple of our law, and has been introduced in our code for reasons of humanity. But we do not think that this rule should benefit to other claimants.

The rule of article 4 of the draft-treaty would be quite a novelty in our law.

According to the draft-treaty on Maritime Mortgages and Liens the wages of the crew rank prior to indemnities due for salvage. Our law, in its article 268, Nr 1, admits a contrary rule, which seems to us to be just,

This article enumerates the various privileged claims. After having mentioned on the second rank the claims mentioned in the draft-treaty under ariicle 3, Nrs 1-3, our law gives the third rank to General Average contributions, bottomry, claim of the shipper on account of goods sold in the course of the voyage for the needs of the vessel, and the fourth rank to claims resulting from liabilities entered into by the Captain in his legal capacity and damages for breach of the contracts entered into by the shipowner himself or by his agent, but whose execution comes within the legal attributes of the captain, claims for compensation of damages caused by fault or negligence of one of the crew during his service, the claim of the captain for the sums paid by him or which he has bound himself to pay for the needs of the ship.

Article 3 of the draft-treaty only gives a privilege to the indemnities due by reason of a collision. We do not think that such claim ought to have a preference over the other claims enumerated by our law.

As to article 6 of the draft-treaty, it is a matter of course

that, when the freight has been cashed by the shipowner personally, the lien cannot subsist.

Article 272 of our law contains an identical rule ; but adds that if the lien becomes extinct by such reason, the shipowner is personally liable for the amount he cashed. We presume this to be also the meaning of article 6 of the draft-treaty.

As to the Questionnaire on Freight, we refer to our Answer, printed in Bulletin Nr. 12, pages 36-37. (1)

Copenhague , April 16th 1907.

A. HINDENBURG,
OTTO LIEBE,
ADOLF CARL,
VIGGO MIDDELBOE.

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(1) That report has been reprinted in the first Set of Preliminary Reports for the Venice Conference (Bullet. 14, page 191).

DANMARK

DANISH ASSOCIATION OF MARITIME LAW

Of the Lien on Freight

by Mr. A. Hindenburg
President of the Danish Association of Maritime Law.

It is universal law, to-day, that the shipowner is liable for the wrong navigation of his vessel. In case of collision, the Courts ascertain what caused the accident. When one of the vessels is without any blame, whilst the accident could have been avoided if the other ship had not manoeuvred as she did, the owner of the latter vessel is condemned to pay the damage.

We do not intend to go to war against this jurisprudence. It shall be for many years still the *jus quo utimur*.

But it is impossible to *explain* this jurisprudence by the theory of negligence and by the rule that the employer is liable for the faults of his employee or servant.

In 99 cases out of a hundred, the captain of the vessel has committed neither fault nor negligence. He might have acted better, it is true ; he as been deceived, but that may happen to everybody.

This is also recognised in practice. Neither the captain nor the pilot is held liable in case of collision, and this is perfectly equitable (1). Now, if the captain is not guiltly,

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(1) A. Hindenburg : La théorie des dommages-intérêts in the « Revue critique de législation et jurisprudence ». January 1901, page 32.

how then is it possible so say that the shipowner shall pay for the fault of his servant. If the captain cannot be sentenced to pay damages because he is innocent of guilt, the same conclusion must be adopted as towards the shipowner, who is always perfectly guiltless.

The rule we adopt to hold the shipowner responsabile whilst the captain is absolved, is explained by the principle that he who profits by an industry, a trade, must bear the risks relating to same : *Ex qua persona quis lucrum capit ejus factum prœitare debet.* (p. 149 ; Dig, 50-17) (1).

When the judge sits quitly in his study, it is easy enough for him to decide afterwards that the accident might have been avoided if the captain had acted in such or in such another way ; but this does by no means imply that the captain has been guilty of negligence. In the great majority of cases, the collision is a fortuitous accident. This does not prevent however that it may be useful to settle legislatively who is tho bear the damage ; whether it shall be apportioned between both ships or borne exclusively by either of them. It must however be owned that this is not the application of the rules of common law on fault or negligence, because with such doctrine, we could not fail to arrive at result altogether wrong.

When the shipowner is made liable with his vessel, it is natural that he be also liable on the freight for the last voyage. Ship and freight form the « fortune de mer ».

It is generally agreed upon that the creditor of the ship must not lose anything through the contracts of the shipowner. If the shipowner causes freight to be paid to him in advance, having no obligation to refund it, it must be recognised that such freight forms no part of the « fortune

(1) De la faute en matière d'abandon et de la responsabilité des propriétaires de navires. Antwerp 1899.

de mer ». However, the shipowner must not deprive the ship's creditor of the lien which the law grants to him on the freight, and for that reason, he is personally laible on the freight cashed.

From a practical point of view, the lien given to the ship's creditor is of greater importance than the personal and unlimited liability of the shipowner. In order to enforce this lien in case the shipowner proves insolvent, the creditor must be satisfied to share *pro rata* with the other creditors of the shipowner. In virtue of his lien, he enforces payment by way of sale of the vessel to the exclusion of the other creditors who have no lien. If the owner has mortgaged his vessel, this bears no influence : hypothecations are overranked by a privileged claim.

However, the ship does not represent the only guarantee of the creditor. The latter's lien attaches also to the accessories of the vessel, to the freight. There is no difficulty as far as the shipowner himself sails his ship. In that case, the freight, i. e. that which is paid in consideration of carriage of goods, the fruit of the vessel, guarantees the lien.

But it may happen that the shipowner himself renounces to manage his vessel, to trade with same. He prefers to be satisfied with a reduced hire-price and no leave the trading of the ship in the hands of the charterer. The shipowner pays the captain and the crew, but he instructs the captain that he shall have to act under the orders of the time-charterer.

It has been observed that the creditor of the ship must not suffer a loss because the owner receives to freight. Neither must he be the loser because of the contracts entered into by the owner which are, as towards him, *res inter alios acta*. The consequence is that the real freight, viz that which is earned by the carriage of goods,

must be subject to the lien. It may not be permisible that the owner can prevent this.

On the other hand, if the creditor of the ship must not lose by reason of the contracts of the owner, neither must he profit by same. We cannot recognise the right for him to consider as subjected to his lien the hire-price earned by the shipowner at the same time as the freight earned by the time-charterer. If we start from the principle that the contract passed between the owner and the time-charterer of the ship must be considered, as towards the creditor, as a *res inter alios acta*, we come to the conclusion that the lien must attach to the freight, just as if the owner himself had traded with his ship; but that the hire-price obtained by the owner must not come within the objects of the lien.

It will be admitted doubtless without much difficulty that the creditor of the ship has no right to be better treated than if the shipowner himself had sailed his vessel; but it has been contended that in such case, the creditor had a lien on the ship and on the hire price whilst he had none on the freight.

In cases of collision, we arrive at this result if we rely on the rules as to faults. The captain is considered as having committed a fault, with this consequence that the shipowner must pay for his servant. The shipowner is liable with his ship and with the profit which he draws from same, with his « fortune de mer » i. e. in the present instance, with the hire due to him by the time-charterer.

If it is true that jurisprudence is founded on the rule according to which the risk must be borne by the person who has the profits of the trade, we arrive to a different result. It is in fact the time-charterer who directs the voyages of the ship. The shipowner has only a moderate hire-price, precisely because he wants to avoid the risk.

The consequense is that the time-charterer must bear the consequenses of the accidents and that the lien of the ship's creditor, in case of collision, must attach to the freight. If we recognize that in case of collision the shipowner and the time-charterer are both innocent, then we do not understand why the risk of fortuitous accidents should be borne exclusively by the shipowner. It is contended that the captain is the servant of the shipowner and not of the time-charterer.

But then it may also be said that as the Captain has to follow the instructions and obey orders from the time-charterer he is the servant of the latter.

This would in fact mean that the captain should have two employers of which he would be the servant and that these two employers are jointly responsible for faults of the captain.

In our opinion however, this solution in accepted by nobody.

In case of collision, the shipowner must be liable on his vessel. He has abandoned the management of the ship to the time-charterer. But this contract does not concern the creditor of the vessel. He enforces his lien on the vessel just as if the shipowner had not hired it out. The owner shares in such case the risk with the time-charterer. In case of collision, the natural solution is that the damages are borne proportionally by the ship and the freight. This solution is accepted by the Norwegian underwriters in their scheme of 1894, page 44.

« If the shipowner has had to pay to a third party damages by reason of a collision, such loss is borne by the underwriter of the ship and by the underwriter on freight, in proportion to the amount insured for the ship and that of the freight. »

In practice, the creditor of the ship enforces his lien on

ship and freight. If the damage results from a non-execution of a contract, the creditor may enforce payment by liquidation on freight. His lien attaches to ship and freight. When making use of the liquidation on freight, he obtains payment from the time-charterer and not from the shipowner. And notwithstanding, it is said, in such case, that the captain contracted as representative or servant of the shipowner who is liable. Nobody thinks to say that the creditor may only take his regress against the ship and the hire-price, and not against the freight as this would not concern the shipowner.

FRANCE

FRENCH ASSOCIATION OF MARITIME LAW

REPORTS

on the draft-treaty relating to

Maritime Mortgages and Liens

Submitted to the Venice Conference 1907

Remarks

The French Association of Maritime Law has received two reports as to Maritime Mortgages and Liens.

1° A report of Mr Lefebvre, advocate at Alger.

2° A report of Mr. Henry Lureau, average-adjuster, presented on behalf of the Sub-Committee appointed by the Section of Bordeaux.

It be observed that the text reproduced by the Report of Mr. Lefebvre as being that of the French Association, is the text adopted in the year 1905. As a sequel to these two reports, will be found the text proposed in consequence of the resolutions adopted by the French Association, in its meeting held at Bordeaux on June 1st 1907. These resolutions differ on many points from the conclusions adopted by Mr. Lefebvre.

REPORT

by Mr. CHARLES-EUGÈNE LEFEBVRE,
Advocate at the Court of Appeal of Alger.

General remarks

Moveable by definition, but submitted by their very nature and by their use to peculiar needs, ships have always required a special legislation, different from common law.

So on the one hand, a ship may be burdened with mortgages or other similar liens, and on the other hand, the mere fact of contracting with it, or even to become (owing to a casualty), its creditor, victim or debtor, and owing to a fault, a delict, a quasi-delict or assistance-services, may give raise to a lien in favor of third parties, or against such third parties in favour of the ship.

Further, the ship may be made the object of actions *in rem* by some classes of creditors and of a right of compulsory execution on behalf of ordinary creditors. (1)

This means already very knotty problems to be solved for the respective national legislations. But in the face of the existing texsts which may be said to be almost always

(1) See for the description of these various rights according to the legislations :

Fromageot, H., International Maritime Comittee. — Hambourg Conference. — Third question of the programme. — Study of the conflicts of Law relating to real rights on ships. — (*Revue internationale de Droit Maritime*, XVII year, 1901-1902.)

Lefebvre, Ch.Eug., Des conflits de lois en matière de propriété de navires, d'hypothèques et autres droits réels. — (*Revue internationale de Droit Maritime*, XX year, 1904-1905, p. 796.)

in conflict, this even goes to complete incoherency; and it may often happen that someone of the ship's creditors, whether he has a mortgage or he lien, thinks his position to be beyond any dispute, when to the contrary he may be frustrated from all his rights according as the requirements of navigation or the cleverness of a creditor having arrested the ship shall have brought the vessel to such or such port where it shall come under the application of different systems of law.

Yet, is not the ship essentially, and especially at the present time, the first of basis of credit and of means of exchange?

Its very existence and its relations with third parties, on the high seas and in all centres of commercial activity of the world, ought they not be to foreseen with a mathematical accuracy as to their origin, their evolution and their end in order to avoid mistakes, disappointments, errors, damages and losses of any kinds, frauds and *dolus?*

Therefore, in this matter still more than in any other it was unavoidable that difficulties of various characters finding their origin in the conflct of national legislations, should arise; difficulties which are numerous, happening often and again, and which cannot be passed over without inconveniences or injustice.

In fact the reason is that all parties who may have, near or far, any connection with the maritime venture — all without exception must have their opposite interests in conflict with each other; from the shipowner down to the last servant on board; from the shipbuilder and the banker down to the shipchandler; from the Public Authorities and Fiscal Authorities down to the Pilot, broker and guardian; from the salvor to the vessel collided with; from the contractual creditor to the unvolontary creditor, — not a

single element is failing for the whole gamut of possible difficulties.

The questions comes therefore in its right time and we may without risk of being taxed with exaggeration, proclaim the urgent necessity of an international settement.

But those who have conceived the bold scheme of an unified maritime law and who patiently pursue the realisation of their aims, have acted in this matter with a very great prudence, whilst at the same time they displayed the most clever diplomacy.

Former labours

Already in 1904, the Amsterdam Conference had to examine the mere question of principle :

« How should be remedied the divergency between the » various laws as to Maritime Ownership, Maritime Mort- » gages, privileged rights and Rights *in rem*.

» By way of unification of the different legislation?

» Or by application of the law of the flag ? »

It was cleerly shown thereby to the meeting that the seat of the ill was not to be defined, but the Conference was simply to give its opinion on the nature of the remedy, without going into details as how the cure should be effected.

We must also recognise that this question was solved without great delay and that the Conference decided as to this, « that it is desirable to put an and — by the adoption » of a uniform law — to the conflicts of law with regard to » rights *in rem* and preferential rights on ships, without » prejudice to such differences of law as arisen with regard » to matters of national interest only. »

This principle being thus fixed, the delegates found that they had still some time left; they employed same to inter-

rogate and consult each other, according to their respective opinions and the discussion threatoned even to deviate when under the guidance of our friend Mr. Louis Franck, as supple as tenace of purpose, the Conference was directed on a more practical ground of discussion and on his suggestion, it was decided :

« That there should be a maritime lien on the ship for » the claims arrising out of a collision.

» That the question whether this same lien must be » granted for damage by other accidents of navigation, » must be left to the Sub-Committee;

» That, although not deciding that the lien for collision » should have in principle the same rank which it has » according to English and American laws, the Conference » leaves it to the Sub-Committee to report as to the rank » which this lien, as well as the other liens, should have » in the draft-treaty to be submitted for second reading to » the next conference ».

This Commission was composed of MM. Acland (London), Asser, junior (Amsterdam), Autran (Marseille), Berlingieri (Genoa), Carver (London), Louis Franck (Antwerp), Fromageot (Paris), Hennebicq (Brussels), Lyon-Caen (Paris), Marghieri (Naples), Alfred Sieveking (Hamburgh), René Verneaux (Paris), Antonio Vio (Fiume).

The Commission could not arrange to meet before the Liverpool Conference, and its members could only exchange brief remarks on the text of a first draft-treaty.

To the examination of this draft-treaty, the Liverpool Conference devoted two days; the debate was really a broad one; numerous speakers, great experts on the question, contributed thereto with all their knowledge. Matters were examined thoroughly, concessions were made between those who had advocated and defended

contradictory theories, and finally, one could foresee very clearly that the final agreement was not far off.

However, the atmosphere, still too hot, of this battle-field from which perfect courtesy does not exclude obstination, did not allow yet to agree on the wording of a text, and therefore, the Conference again referred the question to the Sub-Committee, the members of which they increased by adding to their number : MM. Morel-Spiers (Dunkirk), Le Jeune (Antwerp), Leslie Scott, William Gow and James Simpson (Liverpool) and this resolution was passed in the following terms :

« That this Conference, seeing that there seems to be » every prospect, in view of the valuable discussions and » suggestions made to the present Conference, of the » adjustment of existing differences of opinion, and further » that the form and language of the Draft-treaty, as it » stands, require revision, requests the Permanent Bureau » to refer the matter again to the existing Sub-Committee, » adding to its number : MM. Morel-Spiers (Dunkirk), Le » Jeune (Antwerp), Leslie Scott (Liverpool), William Gow » (Liverpool) and James Simpson (Liverpool) ».

The Commission met at Paris in June 1906, and agreed on a draft of treaty which shall therefore have to be examined by the forthcoming Venice Conference.

Without losing sight of the first draft-treaty on which the discussion had been opened at Liverpool, the Paris Commission had chosen as a basis for their labours the text of another draft-treaty drawn up by the French Association of Maritime Law.

It seems evident that there might be some advantage to compare here the three texts of draft-treaties which we have just mentioned :

Text of the Draft-traties

I **Text of Liverpool**	II **Of the French Association**	III **Of the Paris Sub-Committee**
ARTICLE 1 Mortgages and similar securities on ships, which are regulary established and published in each of the contracting States, will be respected in all other States and shall have there the same effect as in the country where they were constituted, subject to the provisions of the present treaty as regards Liens and maritime privileged rights.	ARTICLE 1 Text of Liverpool.	ARTICLE 1 Hypothecations, mortgages and securities duly made and registed in the country of their origin, shall be acknowledged in all other countries and shall therein have the same effect as in the country of their origin.
ART. 2 Mortgages on ships and other similar rights are overranked by maritime privileges and Liens.	ART. 2 Text of Liverpool.	ART. 2 Maritime liens shall take precedence of the rights mentioned in the last preceding article.
ART. 3 A privileged right on ships is given to:	ART. 3 The following liabilities shall give rise to maritime liens upon the ship	ART. 3 The following liabilities shall give rise to maritime liens on a ship, her

Text of Liverpool (suite)	Of the French Association (suite)	Of the Paris Sub-Committee (suite)
1° Claims for judicial costs, taxes and public dues, custody and conservatory costs. 2° Indemnities due for salvage, pilotage and towage and for general average during the last voyage, 3° Wages of the master and crew, since the last mustering, but with a maximum of 12 months. 4° Claims for damages caused by collision. 5° Master's disbursments, money advanced to the master for the necessaries of the vessel during the last voyage ; loans on bottomry ; indemnities for damages to and short deliveries of, cargo : claims for repairs, furnitures, supplies, outfitting to the ship, but only in so far as these claims arise and are enforced at the port where the vessel lies, or in the ports of the same country where she calls during the same voyage.	and net freight due in respect of the voyage in the course of which the liability came into existence, and shall take rank in the following order. 1° Court fees, taxes and public charges, the cost of watching warehousing and preservation ; 2° Money due for salvage, towage and general average losses ; 3° Wages of the master and crew since the date of the last signing on ; 4° Money due in respect of a collision or any other accident for which the ship is liable ; 5° Master's disbursements advances made to him for necessaries during the last voyage, bottomry loans, damages for loss or short delivery debts due for repairs, supplies, victuals, outfit and labour ; 6° Insurance premiums.	accessories and freight due in respect of the voyage in the course of which the liabilities arose, and shall take rank in the following order (see arts 2 and 3 of the draft-treaty on the liability of shipowners). 1° Court fees, taxes and public charges and the expenses of warehousing, watching and preservation. 2° The wages of the master and crew since the date of the last signing on up to a maximum of six months wages. 3° Money due for salvage. 4° Money due to the owners of another ship, or of her cargo or to her crew or passengers in respect of a collision or other accident arising from some act or default for which the ship is to blame.

Text of Liverpool (suite)	Of the French Association (suite)	Of the Paris Sub-Committee (suite)
ART. 4	ART. 4	ART. 4
The privilege granted by the preceding article only exists when the debt in question is justified in the form prescribed either by the law of the country where it arose, or by the national law of the ship, and satisfies to the conditions to which the privilege is subjected by either the one or the other of these laws.	Save in so far as applies to the wages of *the mariners*, the priorities of the liens inter se shall be determined by the date of the liabilities which gave rise to them, the most recent always taking precedence.	Maritime liens shall rank in accordane with the priorities laid down in art. 3. Liabilities appearing in the same class share rateably, with the exception of liabilities for salvage which shall rank in the inverse order of the dates on which they came into existence.
ART. 5	ART. 5	ART. 5
In case the privilege is not restricted to claims arisen during the last voyage, the order of the liens will be inverse to that of the dates of the voyages. For the same voyage, the privileges will rank amongst them in the order of the enumeration in article 3. Those claims which are classed under the same number in that article will have equal rights.	The validity of obligations which give rise to a maritime lien shall be determined by the law of the place where they came into existence, hypothecations by the law of the flag.	A maritime lien shall come to an end at the expiration of one year after the creditor was in a position to enforce it.

Text of Liverpool (suite)	Of the French Association (suite)	Of the Paris Sub-Committee (suite)
ART. 6	ART. 6	ART. 6
The privileged character of all claims is subject to prescription after one year. The national laws regulate the effect of the transfer of the property in ships on privileged claims and mortgages.	A maritime lien shall come to an end at the expiration of one year from the time when the creditor was in a position to enforce it.	The lien on freight shall extend only to so much of the freight as has not been actually received by the shipowner in person.
	ART. 7	
	The maritime lien on freight shall take effect only upon so much of the freight as is still due or is actually in the hands of the Captain.	

Difficulties of principle

The timid from under which the question first presented itself to the Amsterdam Conference, the unforeseen extention which was given to same by the intervention of Mr. Louis Franck, the narrow limits which were imposed notwithstanding upon the first « pleadings » and the hesitating researches of the Liverpool Conference, the very summary justification of reasons which followed the draft-treaty drawn up by the Paris-Sub-Committee in view of the Venice Conference, — all this denotes a certain restraint and embarrasment somewhat more vivid than is wont in the labours of Committies on maritime law.

However, at the present day we may contend in full security that these various efforts, considered as a whole have not left untouched any point which may be relative to this question or which may help to resolve same.

It is perhaps possible to find therefor a double cause :

In the first place, invicibly, the mind of jurist cannot sufficiently separate the words « *mortgages* and *liens* » from the conceptions of Civil law; the word suggests the idea and the latter evokes the basis, which means the very soul of the law of each country. That is the reason why there is a certain degree of repugnace on the side of the representatives of the various nations to touch in any way to this part of the national patrimony, which is always consideree in some way, as a sacrilege.

Then, the conceptions of Anglo-saxon law are, on some points, so widely differing from the cotinental system of law; our friends from the other side of the Channel have during so long a time affirmed their courteous « intransigency » without leaving hope that they might come to a concession, that for either of the opposite theories, there was almost the cruel problem « *to be or not to be* ».

But here, I think we must congratulate very heartlly the

prominent men who have taken so active a part in those debates, for the great prudence and wisdom with which they have assisted their robust convictions, namely Messrs Ruhusen, Justice Kennedy, Asser, Carver, Sieveking, Louis Franck : Berlingieri, Morel-Spiers and many others. Indeed their counsels fructified, by process of time, enlarging every day more and more the way for the progress of the idea, so that, at the present day, the double difficulty of principle to which we just referred seems to exist no more.

As to the first one, the honour comes to the Italian Association of Maritime Law, and specially to Mr. Enrico Bensa, for having found, on that matter, a formula which is scientific and at the same time based on sound reason; maritime law, indeed, must not, and may not be a law of tradition; it is through its very nature, a written law; the requirements, the modifications, the unceasing progress of navigation and trade imperatively require precise rules : the free ocean requires an universal law.

Therefore, let us forge, without hesitation, a written law entirely new, if need be; the civil codes of nations shall not be attained thereby.

As to the obstinate purpose of our English friends, which had provoked the second difficulty, it has also given way, whilst on the other hand, the most obstinate defenders of the continental doctrines recognise willingly that British law contains some advantages on their own system. In that way, they have finally come to a « main opinion » and it is not impossible to find in that system of reciprocal concessions the basis of a legislation which would be not only useful, but even harmonious.

The Venice Conference shall have to rememorate these principles and these remarks, and shall have to put them into practice when it shall have to achieve its work.

The Sea-Estate (Fortune de mer)

The Paris Sub-Committee had not only the duty to revise the dreaft-treaty relating to hypothecations and liens ; it had the same duty to fulfill as to the limitation of shipowners' liability.

After having dealt first with the second of those questions, the Sub-Committee had not failed, when taking up afterwards the first question, to point out the close connection existing, on some points, between these two matters. Furthermore, the Commission has put forward the axiom, which is both juridical and practical, that only the notion which would be accepted as to the « fortune de mer » (sea-estate) might under that head lead to different solutions.

The Commission thus evoked the three systems which co-exist as regards the extent of the active ressources which the sea-estate supposes. According to the theory of the Genoa Congress (1902), the sea-estate includes the *universality of the assets of the shipowner*, all what the ship is worth, all which accrues to same, all monies received through it. The creditors have here the maximum of guarantee.

A second opinion, which is exactly the contrary of the former, limits this guarantee to the ship and her normal fruit, viz the profit at the end of the voyage, or *the nett freight*.

Finally, a third system, which we may call a main system, considers that the creditors shall have for surety and guarantee, outside of the vessel, everything by which she is enriched in the course of the voyage, such as gross earnings, freight and salvage indemnity.

The Commission has declared in favour of this last theory and has left outside of the « fortune de mer » the indemnity accruing is respect of contracts of insurance.

Assurance-indemnity.

As far as we are concerned, we cannot at any rate agree to let the insurance-indemnity (1) go to the estate on shore (fortune de terre), at least in the face of the decision taken by the Commission with regard to Limitation of Shipowners' Liability. That such may be admitted by legislatious where the shipowner is always liable for a lump sum, with a minimum fixed, that may do! But that the shipowner should be entitled to free himself by abandoning things which exist no more, when on the other hand, he shall himself receive the value representing such things, — this would indeed be downright injustice. Vainly should it be objected that the assurance premiums are the price of « a » contract entered into by the shipowner in order to meet » the casualties which his sea-estate repreeents as towards his property en shore » (text of the Commission). This argument carries no weight; in fact: nobody can require the shipowner to render accounts of the use he made, in his property on shore, of the profits which he has drawn from his estate-at sea; it is on the other hand sure that the latter is always burdened with the amount of the insurance premiums. So if some day an accident occurs, — in such case the shipowner would keep his former profits, would further be refunded by the underwriters for the amount of his loss, and the creditors, despoiled of everything, would have no regress at all? This is not permissible.

This remark being made, we adhere, in a general way

(1) This is the personal opinion of the writer. The French Association of Maritime law, in its meeting of 1st June 1907, has to the contrary already decided in favour of the draft-treaty of Paris, viz for the system according to which the insurance-indemnity is left outside of the « fortune de mer ». It has thereby confirmed its former resolutions on that point. (Note of the General Secretary).

to the other decisions of principle of the Paris Sub-Committee which may be summarized by a twofold conception :

General object of the international agreement

To favour the credit of the maritime venture in the broadest possible way ; to organize thereby on a solid basis the guarantee of creditors on mortgage ; to disencumber to that effect the ship of all rights of priority which may be compensated by due diligence and care on the side of the creditor, — so as for instance, the liens of the seller and of the shipbuilder, of the necessaries-man and of him who advances money — the right of retention, the mortgage itself and the arrest of the ship constitute sufficient means of protection. On the other hand, to make stronger than it was hitherto the position of the parties whose services and assistance shall have been useful to the venture, and also of those parties whose fortune shall have been diminished or ruined in consequenee of a nautical fault.

Finally we think, like the Commission did, that it is a wise mesure to subject the liens to a short delay of prescription.

We have now to go into the details of the draft-treaty.

* * *

Hypothecations. — The Commission has only in a slight way modified the first article of French Association's text, — modification which is purely formal.

After all, it merely decided not to tough to the national legislations on that point, and has expressed the wish that an international agreement may be arrived at so as to provide for mortgages and hypothecarian burdens, the

obligation of an extensive publicity. This question deserved consideration, and the text of article 1st of the draft-treaty cannot give us satisfaction : In fact the first part of it, seems to us, to require a division and ought to be modified as regards publicity. That rights of mortgagees be respected everywhere, when duly made and registered in the country of origin, that sounds all well enough ! This is, after all a question of form rather than a question of principle. But the same cannot be said of the question of publicity which then follows ; it matters but little, indeed, for a creditor on mortgage, that the law of his future debtor have organised the publicity of former rights by means of an inscription on Registers, which may be at various spots : Customhouses in some countries, Tribunal of commerce in other States, Port Authorities and so forth. He shall always be able to find out where such inscription was effected and he is only set out to the risk of losing some time to find it out. However all countries have not organised a regular system of publicity : Sweden and Norway, for instance, are very difficient under that respect, whilst in Greece, a mere inscription on the ships' register is required, — wich excludes every possibility of control and therefore leaves room for errors and fraud.

Where shall be some security in such a chaos ? It is therefore quite necessary that the Conference arrives at a resolution which without touching to the basis of the systems of law under consideration, should determine notwithstanding a mode of publicity to be strictly precise in its form, under sanction of forfeiture.

We have at another occasion advocated a twofold inscription : 1° on a special Register at the home-port of the vessel ; 2° on the principal ship's papers. We hereby beg to renew this proposal.

* * *

Liens. — Article 2 of the draft-treaty can give raise to no discussion as it merely establishes the priority of all privileged claims over any mortgages or similar rights; this provision has never been contested.

But article 3, to the contrary, may give an occasion for renewal of endless debates; in fact, it solves most of the questions of principle and decides upon contrary opinions which were defended with much warmth and which have been examined in general in the first pages of this report. Its first paragraph commences with the definition of the assets which shall form the basis of the liens.

Composition of the guarantee.

How shall it be composed?

« Of the ship, her accessories and freight due in respect » of the voyage in the course of which the liabilities arose ».

Of the vessel herself; this does not call for any special remark; her hull, rigging, and gear, — in short the whole of the creditors.

But accessories and freight? The question is indeed very difficult, and in order to define the extent of same, it is necessary to go back to the labours of the Sub-Committee with regard to the draft-treaty relating to Limitation of Shipowners' Liability. According to articles 2 and 3 of the latter text, the accessories are:

« 1° Contributions due to the owner of the vessel for » general average losses in so far as such losses constitute » material damage sustained by the vessel but not yet » repaired;

» 2° Damages due for the repair of any injury sustained » by the vessel.

» 3° Sums of money coming to the shipowner for salvage.

» Money due or payable in respect of contracts of insu-

» rance, premiums, subvention or orther national subsidies » shall not be considered accessories of the vessel. »

General Average

The provision by which indemnities due to the owner for general average losses are only restricted to the amount of damages still existing, seems to us to be highly equitable ; it would not be just, indeed that the material repair of a damage already effected, should be increased by its price in money. The creditor who has borne the damages or losses would run the risk of not being paid for same, and subsequent privileged creditors would enrich themselves on his shoulders. This mere remark must be sufficient and dispense us with further explanations on that point.

Damages to be recovered

As to the indemnities or damages due for the repair of any injury sustained by the vessel, they must include any amounts whatever which the ship may recover therefor ; so every damage or loss which a third party might cause to the ship, and which gives to the vessel a right of action for damages, shall increase with its possible produce the guarantee of the creditors. This is but fair.

Indemnities for salvage and assistance

It is fair also that the common guarantee shall be increased by indemnities for salvage and assistance which might be due to the ship : if they only form an accidental and contingent produce of the vessel, in general, they are notwithstanding, a fruit of the maritime venture, of the capital engaged in sea-trade. It must even be said that they are the natural and only fruit of such vessels as are especially equipped for assistance and salvage services.

For the latter vessels, which do not earn any freight, no objection of any kind has been raised ; but for other ships, it has been contended that if we were to admit that all

rule, seeing that this diminution of freight would only be the result of one of the conditions of the contract in virtue of which freight would have been stipulated.

Discounts. Freight due in any event

Freight may be prepaid, or payable only at destination. It is essential, however, if we want to render this law efficient, and to give security to the claims we intend to protect, that no distinction whatever be made on that subject. If the freight has been cashed, it must be refunded entirely; in any case, it must be added to the common guarantee (See draft-treaty on Limitation of Shipowners' Liability, article III).

Fixation of the quantum of freight

The amount of freight may be ascertained by means of two kinds of documents : the charter-party or the bill-of-lading. But it may also be kept secret, first because in all cases there must not necessarily exist a charter-party, and in the second place, by the use of the mention « prepaid » on the bills-of-lading; so that in such case it would be impossible to ascertain the amount of freight without resorting to other means. Finally, in the case — much more simple — where there is no charter-party, but where the bill-of-lading mentions the rate of freight, we would be compelled to rely on that indication.

So, when deciding that the lien of the creditors shall affect the charter-party-freight, and not the freight of the bill-of-lading, the Commission has adopted a formula which is much too narrow, and which could be amended as follows : « Freight shall be determined in the first place by the charter-party; failing this, by the bill of lading; and in case there should be neither charter-party, nor any mention as to freight on the bill-of-lading, it should be

ascertained by any means of proof authorised by the national legislations.

Freight of the voyage during which the claim arose

Finally, and as a matter of course, privilleged claims shall only have a lien on the freight of the voyage in respect of which they respectively came to existence.

As regards the definition of the voyage, we do not think it necessary to come back upon the former discussions. But we must at least briefly summarize the results.

In September 1903, the Antwerp Commission expressed itself as follows;

« The voyage shall be considered to be at an end after
» final discharge of the goods and passengers happening to
» be on board the ship and shown on the manifest at the
» moment when the obligation has arisen and in case of
» successive obligations after final discharge of the whole
» of the goods and passengers happening to be on board
» at the moment both of the one and of the other event.

« If the ship carries neither goods nor passengers, the
» voyage will be considered ended at the first port it puts
» into or at the particular port where it happens to be ».

This deliberation was sufficiently clear for the matter we now discuss. But the connection existing between the question of the Hypothecations and that of the Limitation of Shipowners' Liability, must normally lead to a more extensible formula.

In a very remarkable study, which was intended to guide the labours of the Amsterdam Conference (R.I.D.M.XIX, p. 628) Mr. de Valroger examined more especially the notion of the voyage with regard to the extent of the shipowners' liability, and observed that the text of the Antwerp Commission was considerably different from English law. Whilst the Antwerp text fixed a liability

limited per voyage, English law tariffed same for each accident. The Paris Sub-Committee, however, has adopted a main-course and has given to the creditors the option to arrest the ship even before the end of the voyage and to require bail against withdrawal of the arrest; so that the shipowner, who can thus choose between giving bail or having his vessel sold, is the sole master of the voyage; in every case, his decision ends the voyage and liquidates the assets relating to same. It follows that the freight should necessarily be included either in the accounts closed up, at the time of the sale, or in the amount of bail which should have to be given by the shipowner.

Passage money

The Paris Commission whilst trying to define exactly the fruits — accessories of the vessel, has vainly endeavoured to find a general expression including passage-moneys. Neither can we succeed to find it; but it is at any rate certain that this remuneration for carriage of passengers is essentially to be assimilated to freight and shall follow freight everywhere. (See art. 3 of the draft-treaty on Limitation of Shipowners' Liability).

After having fixed the composition of the common guarantee, article 2 of the draft-treaty determines the privileged claims and at the same time the order in which they shall rank :

Privileged claims and their rank

« 1° Court fees, taxes and public charges and the
» expenses of warehousing, watching and preservation.
» 2° The wages of the master and crew since the date
» of the last signing on up to a maximum of six months
» wages.
» 3° Money due for salvage.

» 4° Money due to the owners of another ship, or of » her cargo or to her crew or passengers in respect of a » collision or orther accident arising from some act or » default for which the ship is to blame. »

Court fees, taxes and public charges

Court fees must not detain us ; they have a privileged rank which is never discussed, and even if they should not deserve same, any more than taxes and public charges, they are, for the same reasons, beyond discussion ; not so on account of any sympathy, — as they deserve none ; neither by the force of law ; but they are still more powerfully by the right of the strongest.

Expenses of warehousing, watching and preservation.

As to expenses for watching and preservation, they occupy here the place which is due to them ; in the order of dates, they are the last which have been laid out in order to assure that the creditors receive the guarantee untouched.

Wages of Master and Crew. — Captain in fault.

The lien of the Captain and crew is not less justified, for reasons of humanity, even with the extension given to same by the Paris-Sub-Committee.

However as regards the wages of the Captain, if he is found guilty of nautical faults, the question arises whether it would not be well to provide forfeiture of this favour ? We think so.

Moneys due for salvage.

Moneys due for salvage and assistance here take the rank which their character deserves ; this shall be, namely in France, a happy means of making amends for that which

the legislator has forgotten. In fact, we were compelled, in order to remedy to this omission of article 191 of the Code of Commerce, to rely on paragraph 3rd (expenses made for the preservation of the things) of article 2102 of the Civil Code ! And we cannot even fail to mention the uncertainty which has been shown by our Court of Cassation, on January 19th, 1864, when it had to decide on a conflict, between one of the general privileges of our law with the special liens on ships. The draft-law of 1867, as well as the Belgian code of 1879, also put that privilege at too low a rank. The German code, the Dutch code and the English law were much nearer to justice, and the Commission has done wisely to follow them.

Nautical fault. Indemnities due for damages to third parties. — Collision. — Other accidents.

Paragraph 4 of article 3 of the draft-treaty supposes that the privileged claims which it enumerates, have but one single origin which it clearly defines : *a nautical fault of the ship* (accident arising from some act on default for which the ship is to blame) whether it have caused *a collision or any other accident.* The Amsterdam Conference had only decided the principle of a lien for the damages caused by collision (1). It is true that Mr. Louis Franck has proposed a text which included also other accidents, but it was on our proposal that this motion was divided. The Paris Commission thus takes up again the idea of our distinguished Antwerp colleague: we shall follow (1) the more so as, when we intervened on that point, at the Amsterdam meeting, our only aim was to obtain the express adhesion of the Con-

(1) The French Association (1st June 1907) was of opinion that the lien granted by the draft-treaty to claims for collision, should be omitted (Note of the General Secretary).

ference to this second part of the motion of Mr. Louis Franck; but as the division of the motion had been voted, the Conference was not further consulted on that second part.

Third creditors

Neither was the Conference consulted on another question although it has also much importance : shall the lien for collision or any other accident arising from some nautical fault, be extended to all claims for damages, or shall it be reserved solely to some of those claims ? To render our question more clearly : the text of the Sub-Committee only grants the benefit of the lien to *indemnities due to the owners of another ship or of her cargo, or to her crew or passengers* by the vessel which is to blame for the nautical fault.

Other victims

The decision of principle of the Amsterdam Conference, which is favourable to the ship having suffered, does not exclude the same advantage to other parties having suffered by the same event causing damage.

Now, outside of the interests which have been wronged on board of the ship collided with, or which was a victim of the accident having given raise to the lien, there can still be other interests which have suffered by the same event : so for instance those mentioned in article 2 of the draft-treaty on Limitation of Liability, paragraphs 1 and 3 (interests on board of the wrongdoing ship, and dikes, quays and other fixed objects).

It may occur that the assets formed by the wrongdoing ship sufficiently cover the privileged claims of the suffering vessel. But if the owner of the wrongdoing ship is insolvent and consequently, cannot, as is provided by article 4

of the draft-treaty, make up by payment of a sum of money the amount forming the limit of his liability, such as it is provided by article 3 of the same draft-treaty, which payment shall be equal to the sum for which privileged creditors have availed themselves of their right of priority — the consequence shall be that the creditors of paragraphs 1 and 3 of article 4 aforementioned, shall have nothing to divide among themselves.

And yet, the one as well as the others derive their rights from the same source, be it delict, quasi-delict or default of the debtor. Why should the law treat them in a different way ? Amongst the sharpest criticisms which have been urged against this new lien in favor of collision-claims, there was one which alleged that this system lacked any juridical basis; that never a delict, a quasi-delict or a fault have involved in favour of the victim a right of priority on the property of the debtor who is liable for the acts which caused the damage. Without having any wish to deny the real worth of such argument, we have nevertheless opposed same merely because we consider that the new provision seemed to us to meet very well an urgent necessity in favour of which many good reasons have been given. However, we are much enclined to think that which may be considered as true for some of the victims of the accident, must be so as well for all the parties who suffered through the same fact.

As to this, the Venice Conference can therefore examine the question whether it is proper to grant an advantage to the interests we just referred to, in which cases and to what extent ?

Liens suppressed. — Average and shortage

The French Association had grouped under paragraph 5 of article 3 of its draft-treaty (which was apparently copied

from the Liverpool draft, a series of claims whose privileged character is at present recognised almost everywhere. The Paris Commission has struck them out, in the first place because of the principle adopted that the number of liens should be restricted and further because, as a matter of fact, the careful and diligent creditor shall be in a position to take the necessary measures in order to enforce payment for his supplies or his work. There remain only the claims for average and shortage which may be considered as having been sacrificed in the new text.

The next Conference, if it could consider these claims, would no doubt deserve the gratitude of the shippers.

Insurance premiums

Finally, the Paris Commission has struck out the lien for premiums of insurance, which the French Association desired to maintain. (1)

In our opinion, this lien will impose itself if, as we suggust, the insurance-indemnity is included in the sea-estate ; if however such insurance-indemnity is excluded from that estate, it is but logical that the underwriter should not be given an advantage on this same sea-estate which he would never enrich, but which he always would exhaust. In such case, he would know that he only contracts with the shipshipowner's property on shore and he would have to submit to any casualties which this might involve for him.

Rank

We have finished the enumeration of the privileged claims. In a general way, they rank according to the enu-

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(1) The French Asociation (1st June 1907) decided not to insist on the maintainance of this lien.

meration itself and claims enumerated under the same number of art. 3 share *pro rata*.

Article 4 only establishes an exception from this principle with regard to moneys due for salvage or assistance: as the last service redered is in fact considered to have assured the preservation of the common guarantee, these indemnities must normally rank in the inverse order of dates.

By deciding this, the Commission has reduced to the only claims for assistance or salvage a rule which the French Association has wished to extend to all the categories of liens, that of the crew excepted; it has also rejected another theory, which was founded upon the idea of the voyage and the result of which would have been that all the claims of the last voyage would have ranked prior to those of the former voyages by reversing the order of the latter.

We are, without any reserve, of the same opinion as the Sub-Committee; the legislator did not intend to substitute himself the prudence, the ability and the diligence which must always be observed, especially by a creditor of the maritime venture; that which is essential is to give to the latter the necessary means of protecting his interests; and we have seen as to this point, that, having the right to arrest the ship and to require bail, this is sufficient to guarantee him fairly; so it rests with himself to look to his own interests.

Justification of formalities required by national laws

As the privileged right attached to a claim results with strict accuracy from the very nature of the claim itself, it becomes useless further to deal with the question of form which was considered in the draft-treaty of Liverpool. Of course, article 5 of the French Association's draft

follows the same fate, with exception of the provisions relating to mortgage claims.

Prescriptions

In order that our opinion may be maintained on that point, it is however necessary that the privileged creditor enforces his right within a fixed delay. Taking into account the desire expressed that there should be a short delay of prescription, the Commission limited that delay to one year (article 5). However in order to guarantee the bona fide creditor as much as in order not to come into opposition with English law, where prescription does not exist in the law and is left to the appreciation of the judge, the Commission decided that such delay should be reckoned from the day on which it is proved that the creditor could act ; this is, in our opinion as equitable as might be.

Freight always due

After what we have stated above with regard to our conception of freight as an accessory, it will be easy to understand our desire to strike out simply from the draft-treaty article 6, the strange effect of which would be to deprive the creditors from this part of the liable estate, when the shipowner should have personally cashed the amount of same. In practice, this provision, which nothing justifies, would, in most cases allow the possibility not to include freight within the assets of the responsible estate ; whilst freight must always be paid out to that estate by its natural debtor, if the latter has not yet paid same, or by him who has already cashed it, whomsoever it may be.

* * *

Transfer of the property on ships. — This question may eventually only, be submitted to the Conference of Venice ;

it is however allowed to observe that the solution of that question is quite necessary in order to complete the work which that meeting will undertake.

As a general rule, it may be said that national legislations have provided the mention on the documents or on the public Register already alluded to for the registration of mortgages or other similar rights ; however, the diversity of means of publicity is still greater than with regard o this last matter. The comparative tables drawn up by Mr. Fromageot (R. J. D. M. XVII, p. 521 and 522) shall give a clear idea of same ; on the other hand, one can find there a very interesting effort made in some countries in order to insure, through their consular agents at the ports of origin, the regularisations of the transfers having taken place in foreign parts.

This organisation of publicity, which we wished to see applied also to mortgages, ought in all cases to be extended to all legislations. This would mean a first step towards suppression of all difficulties on that point.

It would nevertheless remain necessary to determine what shall be the fate of privileged and hypothecarian claims in case of a transfer which should be thus duly made and registered.

It seems difficult to us not to maintain for them the « droit de suite », of which on the other hand ordinary creditors would be deprived henceforth. But it will be very important to limit the effects of same by formalities of liberation which shall be the more simple and speedy as, during the time they require the purchaser of the ship could not, on the one hand pay out the whole it its price, than that he could, on the other hand, mortgage the vessel.

CHARLES-EUGÈNE LEFEBVRE,
Advocate at the Court of Appeal, Alger.

Maritime Mortgages and Liens

REPORT

presented to the French Association of Maritime Law

on behalf of the Commission of the Bordeaux-group

BY

M. HENRY LUREAU

Dr. jur. Average adjuster

A mortgage and liens attaching to an object which, by its very destination, is subject to movements from one place to another, render the position of a creditor specially dangerous if the creitor is not sure that his claim shall be guaranteed in foreign countries as well as in the country where the debt has been incurred. Contingencies or accidental causes such as the sale or the arrest of a ship in a given port rather than in another one, ought not to endanger the existence and the extent of the mortgage-claim or lien; neither ought it to be possible that an ordinary creditor, by arresting the ship in a certain port, can get rid in so easy a way of mortgages or liens attaching to a vessel.

The advantages wich maritime trade may and should derive from credit, are not to be de contested; but it is indispensable that the ship, which is to guarantee the mortgagee, be at least in a clear position. Privileges or liens which are latent charges, by their very nature, represent therefore an impediment with regard to mortgages, and

the Commission has been naturally led to think that it is necessary to restrict as far as possible the number of liens.

This principle being once admitted your Sub-Committee has examined successively the various claims classed as having a lien, in article 3 of the draft-treaty which shall be the subject of discussion at the Venice Conference. These claims are four in number.

Let it be remembered that according to article 192 of the Code of commerce, maritime liens are 14 in number. The limitation of same to 4, as accepted by those who have drawn up te draft-treaty, is therefore very sensible as compared with existing French law. Liens existing in our law, and which have been maintained by the draft-treaty, are only two in number, viz : 1° Court fees, and 2° wages of captain and crew.

All other liens are suppressed, and two new ones are added : 1° Moneys due for salvage and assistance ; 2° indemnity due to another vessel in respect of collision.

According to the text of the draft-treaty which we are to examine, the liens would rank in the following order 1° Court fees taxes and public charges, expenses of watching and preservation ; 2° the wages of the Master and crew since the date of the last signing on but up to a maximum of six months wages ; 3° Money due for salvage and assistance ; 4° Money due to another ship or to the cargo or crew or passengers in respect of a collision or another accident arising from some act or default for which the ship is to blame.

Let us consider successively these various claims, and guiding ourselves by the commercial traditions which are proper to our country, let us ask ourselves on the one hand whether it be convenient to grant a lien to all claims as enumerated above, and on the other hand whether these who drafted the proposed treaty have not made on the

enumeration contained in our article 191 such reductions and restrictions which cannot be in accordance with our conceptions and the modern customs of our trade.

Of course, we may not lose out of sight that our aim is to arrive at an international agreement and that, in the face of the very appreciable divergencies existing between the legislations of the States which are to enter into such agreement, this accord can only be reached if important concessions are made reciprocally.

Court fees are placed in the first rank. Such lien is as a rule admitted in all States.

On the second rank are the wages of Master and crew since the date of the last signing on, up to a maximum of six months wages.

Our Code of commerce placed this lien on the sixth rank and wages had a lien for the last voyage only. In the draft-treaty the time is limited to six months and such limitation to a period of time seems to us to be much better than the limitation to « the last voyage », seeing that this latter expression does not correspond to the actual conditions of modern navigation. Your Commission has thought fit, for reasons of humanity, the opportuneness of which cannot be denied, to maintain the claims of the master and crew in respect of wages, as having a lien on the second rank, for a maximum of six months, as provided in the draft-treaty.

With paragraph 3, « moneys due for salvage or assistance » we come into a new system.

No divergency of opinion has been expressed amongst us on that point ; we were all agreed to recognise that a lien should be granted to salvors and that such lien ought to have the third rank.

If any creditors deserve to have a lien, surely, they must be the salvors. Indeed, all other creditors would lose their claims if the salvor had not preserved the common guaran-

tee. On the other hand, it is indispensable to encourage seamen to give assistance at sea, and they must have a certainty that they shall receive in any case a remuneration for the services rendered.

The draft-treaty adds to these three categories of liens referred to above : « money due to another ship, or her cargo, her crew or passengers, in respect of a collision or other accident arising from some act or default for which the ship is to blame. »

A lien of such nature could not find favour with your Commission, and we have vainly looked out for reasons based on law or on practice which might justify same. However, such lien exists under British and under American law, and it has even the first rank in the codes of those two States. After lengthy discussions, it has been admitted by the Conferences of Amsterdam and of Liverpool, and even amongst French delegates, there has been a majority in favour of such lien. We frankly own that we do not understand why a lien should be conceded to claims which do not tend in any way to preserve the common guarantee ; how a claim which has arisen out of a quasi-delict should overrank claims for mortgages and even ordinary claims. And if it should be convenient to give a lien to the ship collided with, we do not see why we should not give also a lien to all other claims resulting from damage or losses caused to third parties.

The draft-treaty does not give any lien to the necessariesmen who have given credit to the ship, and it allows a lien in favour of claimants in respect of a collision, although the latter have certainly rendered no service whatever to the colliding ship. Furthermore, the event which gives raise to the claim for collision, is an unforeseen fortuitous accident and it seems to us that insurance,

but not a lien, should guarantee the consequenses of such contigencies.

Why ought we to garantee a claimant for collision rather than the colliding ship.

Collision, whether it by accidental or caused by neglygence, cannot be considered as willful, because the risks run by the colliding ship are, in principle, at least te same as for the ship collided with. A justification of this lien has been attempted on the ground that it we dit not maintain such lien, the result would be that this would give in some way an immunity to the ship for damages which she should cause by collision. But it seems to us that this argument falls away for the reason we have just stated, viz that the danger for the colliding ship is as great as for the oter one and that one could hardly admit that a captain, on the mere ground that his vessel is mortgaged and the sufferer in respect of collision would have no actual regress against him, would neglect any care or precautions required by navigation, at the risk of suffering in person grave injury and causing damages to the objects entrusted to his care.

Must we not further observe that the authors of the draft-treaty, when aiming at the extention of maritime credit, would in our opinion, lose sight of their very object if they should finally adopt in favour of the collision-claimant a lien which, with a view to the important amount of damage which such lien may have to garantee, would in reality endanger very much maritime credit.

The only justification of the lien in favour of claims for collision is, that such lien exists in English law and in American law. But is that a sufficient reason to decide the continental nations to accept it also? Whatever be the necessisty of conciliation which must be submitted to in such matters, we do not think so.

The draft-treaty does not mention any of the liens contained in article 191 of our code of commerce. The discussion between the members of your Commission has been held especially with relation to insurance premiums.

We have been of opinion that there was no reason to maintain a lien in favour of the underwriters. Not only is such lien practically unknown in the various countries which are to come to an agreement, but the underwriters have always the option to replace such lien by requiring that premiums shall be paid cash. Such principle is even observed very strictly for fire-policies, accident-insurances, life-insurances &c. and we see no reason why maritime insurance alone must escape this rule of cash payment of premiums.

If it can suit some underwriters to consent to payment of the premiums when the risks are at an and, that is their own business. But it is certainly is no reason why we should give them a lien for their claims. Besides, it has been added that the privileged character of the underwiters' claim is a very weak thing after all at the present time and it is only by literally forcing the text of the law that our jurisprudence arrived to limit the practical extent of that lien, which was very well defined at the time when it was inscribed in our laws, but which is rather vague nowadays at the time of steam-navigation and insurances for a term.

Article 191 of the Code of commerce, paragraph 10, provides that the insurance premiums for the last voyage shall have a lien. But nowadays, insurances for a single voyage are almost unknown, policies being generally signed for a period of one year. Further as voyages of steamships are of short duration and as liens become extinct on every new voyage, the question has finally been raised whether the lien for payment of the insurance premium relating to a whole year ought not to be restricted

for the period of time between the moment when the ship sails from the loading port to the moment when she arrives at the port of destination. Of course, this would have been illusory; we would have seen some underwriter obtaining, on his right of priority, one hundreth part of his claim, when the ship had effected a hundred of voyages. This question has been the subject of endless discussions and a decision of the Court of cassation (dated 20th July 1898) has held that the term « last voyage » must be construed as meaning the period elapsing between the last fitting out of the ship and the last lying-up. Such solution (which the authors of article 191 had certainly not foreseen) remains still very weak notwithstanding, seeing that, in order to escape to the lien of the underwtiters, at least for the greatest part, it would be enough for a shipowner to have his vessel laid-up during the tenth month of the risk, with the consequence that at the eleventh month — date fixed for the payment of the premium, only one month out of the twelve. would be covered by the lien.

NOTE

of the General Secretary of the Association

After having examined the Reports presented by Messrs Lefebvre and Henry Lureau, the French Association adopted the following reslutions :

1° That we should agree to the suppression of all the liens which the Paris Sub-Committee proposed to suppress;

2° That we should also suppress the lien under Nr. 4 of article 3 of the draft of that Sub-Committee, viz the lien granted to indemnities due in respect of collision or

another accident arising from some act or default for which the ship is to blame.

3° As regards the indemnities payable for salvage and assistance, a lien should only be granted to moneys due for salvage or assistance to the ship herself. It would therefore be necessary to add to the draft-treaty an explanatory clause excluding any lien in favour of indemnities by reason of salvage of cargo.

The French Association adhered to the surplus of the draft-treaty of the Paris Commission.

Consequently, the following text has been presented on behalf of the French Association of Maritime Law :

Draft-Treaty on Hypothecations and Maritime Liens

ARTICLE 1. — Hypothecations, mortgages and securities duly made and registered in the country of their origin, shall be acknowledged in all other countries and shall therein have the same effect as in the country of their origin.

ART. 2. — Maritime liens shall take precedence of the rights mentioned in the last preceding article.

ART. 3. — The following liabilities shall give rise to maritime liens on a ship, her accessories and freight due in respect of the voyage in the course of which the liabilities arose, and shall take rank in the following order (see arts 2 and 3 of the draft-treaty on the liability of shipowners).

1° Court fees, taxes and public charges and the expenses of warehousing, watching and preservation.

2° The wages of the master and crew since the date of the last signing on up to a maximum of six months wages.

3° Money due for salvage, and assistance, but only as far as they relate to salvage of the ship herself.

ART. 4. — Maritime liens shall rank in accordance with the priorities laid down in Art. 3. Liabilities appearing in the same class share rateably, with the exception of liabilities for salvage which shall rank in the inverse order of the dates on which they came into existence.

ART. 5. — A maritime lien shall come to an end at the expiration of one year after the creditor was in a position to enforce it.

ART. 6. — The lien on freight shall extend only to so much of the freight as has not been actually received by the shipowner in person.

HUNGARY

HONGARIAN ASSOCIATION OF MARITIME LAW

REMARKS

on the draft-treaty relating to

Maritime Mortgages and Liens

BY

Dr. ANTONIO VIO

ARTICLE I

This article leaves the settlement of mortgage and contractual privileged rights to the legislations of the various States The difference between the draft of the Liverpool Conference and the draft-treaty of the Paris Sub-Committee which we have to examine at present is that the first provides that mortgages on ships shall be published in each of the contracting States, whilst according to the latter draft-treaty, it is enough that they be published in the country of their origin

This modification has been adopted on the ground that otherwise, the various States would be obliged to modify their existing laws with regard to maritime mortgages, and further, that with a view to the modern facility of communications, it is easy enough to obtain information as to hypothecarian rights which may burden a ship, before dealing with the latter.

Article II

With exception of a slight change on the wording, this article is in conformity with the Liverpool draft.

Article III

During the discussion of this article, the British members of the Paris Commission observed : that for the sake of maritime credit itself, it is desirable to reduce as much as possible the maritime liens : the smaller their number, and the greater will be the security of the mortgages; and if the maritime mortgage is strongly establisheid, the maritime credit will have a basis the more sound and it will be so much easier to obtain money on the vessel ; that there is no more any reason to give a lien for all such claims as arise from the exercise of the legal capacity of the Master ; owing to the large extent of the industry of carriage by sea, and to the security and the rapidity of the international communications, it is now possible to obtain money everywhere, within the shortest delay without the creditor's wanting any lien to secure his rights : if he wants to run no risks, he may take a mortgage on the ship and on the freight; and the option he has to arrest the ship, outside of his right of retention, constitutes a most effective protection.

The said delegates therefore proposed to maintain only the privileges contained in article 3, sub 1, 3 and 4 of the Liverpool draft-treaty, viz : Court fees public charges, etc. wages of captain and crew, indemnities in respect of collision and moneys due for salvage and assistance; and to strike out all others.

Therefore, in consequence of this proposal shall be no more considered as privileged claims — i. e. they shall have no legal lien — the following claims, wich were

admitted in the draft-treaty of the Liverpool Conference : claims for politage and towage, bottomry, indemnities in respect of general Average, disbursments of the Captain, moneys advanced by him for repairs to the ship, and claims for repairs, victualling and supplies to the ship.

The strange thing is that whilst on the one side, the number of liens is restricted as much as possible, on the other hand a considerable extention is given to the claims in respect of collision. Indeed, the majority of the members of the Paris Sub-Committee agreed that the favour of a lien shall not only extend to the vessel collided with and to the persons and merchandise on board that ship but also to vessels which would collide owing to wrong manœuvres of another ship, as well as to persons and marchandise on board such vessels.

The innovation proposed by the Paris Commission and tending to restrict the number of privileged claims, might be approved if it really led to its object, viz to favour maritime credit. But this is not the case at all; because as long as there will be a legal lien in favour of claims for salvage and assistance, and in favour of claims in respect of collision, maritime credit shall not attain the extension aimed at. It is not as much on account of the number of liens as on account of their nature that maritime mortgage shall be insufficiently protected. On the other hand the Limitation of shipowners' Liability will involve as a natural consequense a lien in favor of the creditors who have no action against the shipowner personally. That is why there is a principle of equity which commands to grant a lien to all such claims; failing this, there will only be a still greater confusion, which will be an impediment to the rapidity and simplicity of the procedure.

The delay of prescription of six month for the wages of

the captain and crew, as provided in the second paragraph of article 3, seems also to be too short, in our opinion.

For insurance premiums, we do not think it necessary to maintain a legal lien, seeing that the Insurance Companies can ressort to other means for the protection of their interests.

In a general way, we think we cannot much deviate from the proposals on article III, contained in the report which has been approved by our Association on 27th April 1905.

It is also an absolute necessity that outside of the privileged claims admitted in the international treaty the national Legislations shall not be at liberty to allow other liens; for in such case, it would be impossible to attain the object of unification of maritime law, which is the aim of our labours.

Article IV

This articles differs from article V of the Liverpool draft, as it makes no distinction between claims arisen during the last voyage and those which relate to former voyages, and as besides it establishes the principle, which is now accepted everywhere that with regard to indemnities due in respect of salvage and assistance, the priority shall be regulated in the inverse order of the dates on which te various claims have come to existence. It has been said, at the Paris Sub-Committee's meeting, that there was no reason for giving to the claims, of the last voyage a preference over former claims, and that therefore, we ought to suppress every distinctions between these classes of claims.

We are, however, of opinion that this reasoning is not justified.

Claims relating to former voyages must rank after those

of the last one, seeing that the former creditors had the option to enforce their claims before the ship could start on any fresh voyages; and such creditors can only complain against themselves for the consequences of their own neglect or carelessness.

Secondly — and this is the principal argument — the captain would have it very hard indeed to find out persons who would advance money or lay out expenses for the ship, if they were not assured that the lenders and suppliers for the last voyage would have a rank prior to that of claims for former voyages.

We therefore conclude recommending again the provision contained in article V of the draft-treaty which was adopted by our Association in its meeting of April 27th 1905, and which runs as follows :

« The order of the liens will be inverse to that of the » dates of the voyages.

« For the same voyage, the privileges will rank among » them in the order of the enumeration.

» Those claims which are classed under the same num- » ber in that article, will have equal rights, an exception » being however made for the claims under numbers 7, 11, » of article III, seeing that for these latter we must apply » the rule according to which claims classed under the » same number, when arisen formerly, are overranked by » such claims as have subsequenly come into existence. »

ARTICLE V

This article corresponds to the first paragraph of article VI of the Liverpool draft.

ARTICLE VI

This article was not to be found in the Liverpool draft, because according to this latter, the lien did not extend to freight.

Therefore, if the lien must not attach also to freight prepaid, it shall be necessary also to insert a provision stating that if the shipowner has received the freight anticipatively. he shall be personally liable for same.

Finally, the Hamburgh Chamber of Commerce has recommended to settle also two very important questions relative to the shipowners' liability : in how far shall the shipowner be liable for the perfect seaworthiness of the ship and to what extent shall he be permitted to exonerate himself of this liability and of that which relates to his juridical obligations in respect of the contract of carriage ; and said Chamber of Commerce proposes to accept the two following rules :

1. « Clauses by which the shipowner exonerates himself » from his liability for losses or damage to the cargo be- » tween the time of shipment and the date of delivery, shall » be void, as far as such loss or damage should not be » due to faults or negligence of the crew, in the technical » management of the vessel. »

2. « Shall be also void any clauses by which the ship- » owner frees himself from his liability in respect of the » state of perfect seaworthines of the vessel, of the equip- » ment, supplies and manning (crew). However, the ship- » owner shall not be liable for a latent defect which he » could not discover although he displayed all necessary » care. »

Considering the importance of these two questions, we can only adhere to the wish expresed by the Chamber of Commerce of Hamburgh to see them taken up for examination by one of the next Conferences.

DR. ANTONIO VIO.

Draft-Treaty on Maritime Mortgages and Liens

FINAL REMARKS

OF THE

HUNGARIAN ASSOCIATION OF MARITIME LAW

ARTICLE I ET II

No remarks.

ARTICLE III

The following text is proposed :

« Shall have a lien on the ship :

1) Court fees and judicial costs expended for the common interest of the creditors for acts of conservation and execution on the ship.

2) Expenses of watching of the vessel (which are not included under Nr. 1) from the time of arrival at the last port until the sale of the vessel.

3) Rent of warehouses where the rigging of the veesel is stored.

4) Expenses for conservation of the ship and rigging of the vessel since her last voyage and her arrival into port.

5) Wages of pilots; public dues, taxes of navigation, tonnage dues, lighthouse dues, quarantine and port-dues which relate to the ship.

6) Wages indemnities and salaries due to the Captain and to the other members of the crew, for the last engagement, with a maximum limit of twelve months before the arival of the ship at the port where the judicial sale of the vessel takes place.

7) Indemnities due to another ship, to her cargo her crew or to her

passengers in respect of a collision or of any other accident caused even indirectly, by a nautical fault of the vessel, as well as any costs of redemption and retribution or release; moneys due by the vessel in respect of general average, moneys due for liabilities entered into by the captain for the needs of the vessel, as well as the expenses laid out by the captain for the needs of the ship and re-inbursment of the price of goods sold in the course of the voyage for the same reason.

8) Claims for damages caused by collision.

9) The sale-price which is not yet paid up, claims for supplies and work of employees for building or repairing of the vessel, and claims for victuals and supplies, in so far only as such claims arose and are enforced at the port where the vessel is lying, or in ports of the same country where she calls during the voyage.

10) Indemnities due to cargo-owners for short delivery of the goods shipped and for damages caused by the fault or negligence of captain or crew.

11) Bottomry loans concluded before the vessel sailed on her voyage.

ARTICLE IV

The text, as proposed, enounces the principle that, except in case of assistance services, all other privileged claims will share equally, without taking in consideration the priority of the voyage during which the debt has been incurred.

The Hungarian Association, to the contrary, is of opinion that we ought to say as follows:

« *The rank of the liens is in the inverse order of the dates of the voyages.*

For the same voyage, the privileges will rank among them in the order of the enumeration. Claims which are classed under the same number in this article will have equal rights, exception being however made for the claims under numbers 7 and 11 of article 3, seeing that for these latter, we must apply the rule according to which claims

classed under the same number, when arisen formerly, are overranked by such claims as have subsequently come into existence. »

Article V

No remarks.

Article VI

It would be well to add :

In case the shipowner has received the freight in anticipation he shall be personally liable for same.

SWEDEN

SWEDISH ASSOCIATION OF MARITIME LAW

Draft-treaty on Maritime Mortgages and Liens

The Swedish Association adheres to the principles incorporated in the draft-treaty, but observes that according to the Scandinavian laws there is a lien on the ship :

1. For claims in respect of liabilities entered into by the Captain in virtue of his legal capacity ;

2. For non-execution of liabilities entered into by the shipowner, but which the Captain has to execute in virtue of his legal capacity.

The Swedish Association further expresses its opinion that such liens must be maintained in our legislation as long as the shipowner shall not be personally liable for those claims.

Draft-treaty on
Limitation of Shipowners Liability

The Swedish Association generally agrees to the text of the draft-treaty such as it has been drafted by the special Paris Sub-Committee.

ELIEL LÖFGREN,
Secretary.

(Extracts from the Minutes of proceedings of the general Meeting held on 29th April 1907).

NORWAY

NORWEGIAN ASSOCIATION OF MARITIME LAW

REMARKS

on the Draft-treaty relating to

Maritime Mortgages and Liens

ARTICLE I

These provisions are already adopted by our law. (See Law on Registration of ships, (4th May, art. 21. Compare art. 24).

ARTICLE II

This is in conformity with Norwegian law.

ARTICLE III

The 1° is in conformity with existing Norwegian law.

When comparing the 2° of article III with article 268 of the Norwegian law, it shall be observed that the latter is still more extensive and that the order is different.

So, article 268 of the Norwegian law puts on the first rank claims for pilotage, salvage, and expenses made in order to liberate the vessel from the power of enemies, because such sums represent expenses made on behalf of the vessel, and without which the ship could not represent any guarantee for the other creditors.

The draft-treaty, to the contrary, has suppressed the lien for pilotage and has placed the lien for salvage after the wages of the crew.

Further, the draft-treaty leaves out the lien for the claims admitted by article 268, Nr. 3 of the Norwegian law, although such claims had been included — and we think with much reason — in the draft-treaty prepared by the French Association.

By comparing the 4° of the draft-treaty with the 4° of article 268 of the Norwegian Code, it shall be seen that the draft-treaty does not include the claims arising out of the fact that the captain should not execute his liabilities (Maritime law of Norway, article 7) : this latter is founded on the fact that the draft-treaty relating to Limitation of shipowners' Liability only admits this limitation for the faults mentioned under article 8 of Norwegian maritime law.

Norwegian shipowners cannot decide themselves to give up their own law, article 7, 2 and article 268, Nr. 4.

Article IV

This is again in conformity with Norwegian law, article 269.

Article V

See our maritime Law, article 268.

Article VI

This is also in conformity with article 272 of our maritime law.

GREAT BRITAIN

MARITIME LAW COMMITTEE OF THE INTERNATIONAL LAW ASSOCIATION

REPORT

to the Venice Conference of the Comité Maritime International

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Draft treaty relating to the Limitation of Shipowners' Liability

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Generally we approve the Draft Treaty as drawn up by the Special Paris Sub-Committee in June 1906.

Dealing, however, with it as it appears in the English version, we consider this should be modified in the following particulars involving possibly in some cases an alteration of the French text, namely :

In ARTICLE 1, some explanation may be required to be added as a note, that it may be understood that in many countries legislation is required to render the convention binding in Courts of Law. It is not clear that the Article recognises this fact.

In ARTICLE 2, the words « **shall be liable but** » should be inserted in place of the words « shall not be personally liable, but shall be liable. » Also after the word « acts » should be added « **or default.** »

In ARTICLE 6, after the word « Sterling » should be inserted « **per ton of the gross tonnage.** »

In ARTICLE 7, instead of the second paragraph « The risks etc. » the following clause should be inserted : — « **In respect of every subsequent voyage, the ship-owner shall be liable as defined by the preceding Articles; but this liability shall not diminish the security of claimants in respect of previous voyages.** »

In ARTICLE 8, the words « **at any time** » should be substituted for « a port of call. » Otherwise there is no provision justifying the seizure of the vessel before her arrival at some port, other than the port of departure.

In ARTICLE 9, after « Captain » should be inserted the words « **crew or any other person assisting the Captain in the service of the vessel** » as in Article 2.

An additional Article should be added : **Article 10. If according to the National Law the charterer is liable as owner, he shall have the same right to the limitation of liability as an owner.** (1).

Both as regards this Draft Treaty and all other Draft Treaties, we desire to record our opinion that it is highly desirable that there should be not only a French Standard, but an English Standard as well.

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(1) Compare the German Law as to *pro tempore* owners.

Draft treaty on Hypothecations and Maritime liens

Text provisionally accepted by the Commission
sitting at Paris in June 1906

We also approve this Draft Treaty. But we observe that the word « bottomry » is not mentioned in Articles 1 & 3, and we are not certain whether any determination can be said to have been arrived at as to its exclusion or inclusion in the list of charges upon a ship, which are to be recognised under the Treaty. If « bottomry » is to be included, some alteration is required in the words « rendus publics dans leur pays d'origine ».

It is not expressly stated that registered instruments of charge are to take priority according to the date of their registration. This we think should be provided.

Also in Art. 6. " **Shipowner himself** " should be substituted for « shipowner in person. »

Conflict of law as to Freight

Questionnaire on Freight

As to this matter we only report the British law with certain comments which occur to us.

1. Freight *pro rata intineris* should not be due. Where a voyage comes to an end before the cargo is carried to its destination, the distance run has no bearing upon the benefit conferred on the owner of the cargo and it does not measure the expenses incurred by the shipowner.

2. As the freight has not been earned it should not be due. The parties should be left to their ordinary rights in respect of possible claims for damages under the common law according to the special circumstances which have prevented the voyage being carried on.

3. If the cargo is forwarded to its destination by or on behalf of the original carrier, the whole freight should be due but otherwise no freight should be payable to him.

4. This question should be referred to the Common Law as to damages.

5. Demurrage is clearly an indemnity and should not be considered as additional freight.

The second part of this question we answer in the negative.

(*Signed*) ALVERSTONE, C. J.
WALTER G. F. PHILLIMORE.
R. B. D. ACLAND.
THEO. V. S. ANGIER.
JOHN GLOVER.
K. W. ELMSLIE.
JOHN GRAY HILL.
W. ARNOLD.
CHARLES STUBBS,
W. R. BISSCHOP,
Hon. Secretaries.

JAPAN

JAPANESE ASSOCIATION OF MARITIME LAW

Answers to the Questionnaire

Draft Treaty on Limitation of Shipowners Liability

ARTICLE 1

Yes.

ART. 2

Yes. But see notice on Art. 9.

ART. 3

1° Contributions due to the owner of the vessel for general average losses *in so far as such losses constitute material damage sustained by the vessel but not yet repaired.* Omit the words in italics and put instead : « WHETHER SUCH LOSSES CONSTITUTE MATERIAL LOSSES OR NOT. »

ART. 4

Yes

ART. 5

Yes.

ART. 6

The Japanese Association think that the whole article should be omitted.

ART. 7

Omit the second paragraph because it is of no use.

ART. 8

Yes.

ART. 9

The Japanese Association agree to the first paragraph of this article, but observe that according to Japanese Administration Law, the limitation does not apply in this case.

As to the second paragraph : « They shall not apply to liabilities arising from the personal default of the owner » this section should be added to Art. 2 and ought to be made applicable to all cases of limitation of liability.

Draft-Treaty on Maritime Mortgages and Liens

Art. 1 and 2

Yes.

Art. 3 and 4

As to art. 3 & 4 we insist, the same as we did at the Hamburg Conference; but consent to put the rank of the wages of Master and crew higher. (See the Hamburg Conference; preliminary reports p. 41).

Art. 5

Yes.

Art. 6

« The lien.... shipowner in person ». Omit the words « IN PERSON ».

Questionnaire on Conflicts of Law as to Freight

1st Question

No freight due (Nippon Jusen Kaisha is in opposition).

2nd Question

1° whole freight
2° *a*) whole freight
b) in part.

3nd Question

The whole freight.

4th Question

Better fix legislatively the indemnity due.

5th Question

Demurrage must be considered as an indemnity.
A protest by correspondence should be made necessary.

BELGIUM

BELGIAN ASSOCIATION FOR UNIFICATION OF MARITIME LAW

Draft-Treaty on Maritime Mortgages and Liens

REPORT

of the Belgium Sub-Committee, composed of Messrs ALPH. AERTS, WALTER BLAESS, CHARLES BAUSS, LOUIS FRANCK, FRANÇOIS GÉNICOT, CHARLES LE JEUNE, GERMAIN SPÉE, LÉON VAN PEBORGH.

The Members of the Commission have fully approved the principles embodied in the draft-treaty as drawn up by the Paris-Sub-Committee.

At present, there are two principal elements, drawn very distinctly and which should be taken into account. On the one hand, the powerful extension of Maritime Commerce and the ever increasing value of seaships require that maritime credit should be organised seriously and completely, so that shipowners be enabled to obtain the money necessary to their trade very easily and at the lowest possible rate of interests. This object must be attained by maritime mortgage. But on the other hand, it is impossible to attain this object, as the present organisation of maritime Mortgage does not at all grant to the lender any sufficient security.

The principal impediments are the numerous liens,

varying in each legislation, and by which the lender may see his securities escape him in consequence of other creditors enforcing on the ship, which constitutes the security, their privileged claims against which he cannot defend himself efficiently.

Several liens and privileges whose admission was justified in former times, have now lost any reason for existence. By suppressing them, it would be possible to establish a very sound hypothecarian credit, and to have a very clear and precise system instead of the undefinite and intricate state of things, which cannot but cause much trouble and uncertainty to the shipowner and to the creditors. For, even because the existence of such liens is unknown, any control and any preventive action as to the privileges which already attach to the ship, as well as to those which come to existence and even on such liens as one might cause to attach to the ship, are impossible, if the ordinary debts of same should have a priority. Under such circumstances, there is no serious mortgage possible, and this is still more so if the priority of the lien should be extended to the seller or the builder of the ship who was not paid. But these very parties, who have now, under some legislations, a lien which may prove in some instances to be very illusory, would find a far better guarantee in the mortgage, if the priviliged claims which are to rank before their claim, are but very few and if they are thus enabled to foresee their consequences and to attenuate same by insurance. These are fundamental questions which ought to be considered very carefully. If not, we have every reason to fear that any legislation as to maritime mortgage would prove without practical use.

It should be remarked that the draft-treaty now under discussion is very closely connected with that relating to Limitation of Shipowners' Liability. For losses and dama-

ges which are due to the act of the Master and of the crew, the shipowner is allowed to free himself by abandonment or by payment of a limited indemnity. This provision attains especially those creditors who have claims of such kind to enforce. They lose all regress against the owner personally, whilst it remains open to other creditors. It is therefore equitable that the only estate which remains liable towards them, as a security of their claims, does not fall into other hands where it would, to their cost, increase the shipowner's estate on shore.

With reference to these general remarks, the Belgian Commission have expressed their opinion as follows on the different articles of the draft :

Articles 1 & 2

Adopted.

Article 4

Adopted without any remarks as to the provisions under 1°, 2° and 3°.

But as regards the 4°, the Commission was of opinion that the lien for claims in consequence of a collision is very properly limited to the indemnities due to another ship and to the cargo and the persons on board that ship. As for the cargo on board the ship itself and as to the passengers of that ship, there is a contract of carriage the risks of which could be fully appreciated by the contracting parties and which are attaching to the venture in which they engaged, which is not the case for the third parties. Besides, the charterers and passengers generally accept the clauses inserted in the bills-of-lading, exonerating the shipowner of any responsability on account of all nautical errors on the side of the ship with which they contracted. It would therefore be quite out of season to grant them a

lien for the claims which they themselves are content to renounce.

The Commission is of opinion that such lien should be maintained on behalf of third parties, as, in consequence of the option left to the shipowner to effect abandonment, they run the chance to have only the shipowner's estate at sea to enforce their claim upon, and it seems therefore equitable that, being innocent victims of a *quasi-délit* and having no regress against the owner personally, they shall not be deprived of the advantage to enforce their rights on the ship, having a lien on same prior to that of any other creditors who have a regress both on the property at sea and the personal estate.

As to the remark that the draft-treaty does no more consent a lien for bottomry-bonds and for expenses necessary to the completion of the voyage, it has been admitted that this omission was perfectly justified ; the means which the ordinary credit leaves to shipowners are quite sufficient for the purpose and the great extension and speediness of communications with the countries over sea enable them to look themselves to the payment of all disbursments which may be necessary for the sailing of their vessels.

The Commission further remarks that the beginning of article 3 should be worded as follows : « **Only** the following liabilities shall give raise to maritime liens » instead of « the following liabilities, etc. »

Art. 4 & 5

Adopted.

Art. 6

The Commission suggest to strike out this article, considering that, as to this, common law wil be sufficient.

BELGIUM

BELGIAN ASSOCIATION FOR UNIFICATION OF MARITIME LAW

Conflicts of Law as to Freight

REPORT

on the questions put by the International Maritime Committee in view of the Venice Conference, 1907

by a Sub Committee composed of Messrs
Alph, Aerts, Louis Franck, Jacq. Langlois, Alb. Maeterlinck,
Chr. Scheidt, and Paul Baelde

General Question

A. — On which points should conflicts of Law as to Freight be settled internationally?

B. — What are, in each case, the best solutions to be recommended?

In consequence of their very nature, questions relating to Freight must bring into contact the various legislations and the solutions adopted by these several laws very often widely differ; it would therefore be highly desirable if on that matter, uniform provisions — the aim of our Association's efforts, — could be arrived at.

But as at present it would be impossible to arrive, as yet, to the adoption of an international agreement including all the various elements constituting the contract of

affreightment, it seems that all our efforts should tend to a uniform legislation for the more essential questions.

An accident at sea may sometines subject the charterers and the shipowner to a law which they could not foresee: (for instance that of the port of refuge) and it may be said that in such case it is a purely accidental circumstance which decides as to the solution of the most important conflicts wich may occur.

For such cases, at least, it would be necessary to adopt uniform rules, so as to reduce as much as possible the unforeseen, to which the maritime venture is always subjected. Other questions recommend themselves for an international settlement on account of their recurring so often and on account of the great importance of the conflicts thus raised and the interests at stake. The matters under n^rs^ I, II and III of the questionnaire belong to the first category, whilst those under n^rs^ IV and V may be said to come under the second point of view.

First Question

Freight pro rata itineris

Is any freight due when the vessel is lost during the voyage but the cargo saved wholly or partly? In what proportion, and on which basis?

On that matter, three solutions were put forward.

The first one, — which is that of the British law and which has also been adopted in the Belgian Code (art. 97 of the Law of August 21st 1879) does not admit any distance-freight.

The second one grants to the shipowner a freight in proportion to the distance effected.

The last solution does not only consider the mere distance affected, but also considers other circumstances,

such as f. i. : the losses of time and money, the dangers and hardships bearing on that part of the voyage which was performed, as compared with those of the whole voyage.

If considered from a purely juridical point of view, the contract of affreightment should be considered, in its most frequent application, as a contract of carriage : to have the cargo carried up to some place fixed, this is, without doubt, the obligation undertaken by the shipowner, and it is the object, too of the loader or the charterer ; therefore it seems reasonable to assume that, if the goods do not reach their destination, the lessor has not performed that which he has undertaken and has consequently no claim for the freight.

However, this solution has seemed exagerated : it may happen that the portion of the voyage effected has procured a profit to the charterer ; would it then be equitable that the latter be allowed to enrich himself to the cost of the shipowner ? Certainly not ; that is the reason why the Brussels Congress of 1888 proposed to allow to the Master, under some exceptional circumstances, a freight in proportion to the profit which the charterer derived of the incomplete voyage.

This seems to us the most equitable solution ; it may be summarised as follows :

« No freight is due if the ship does not complete the » voyage agreed upon ».

« However if the partial voyage performed has really » procured any profit to the owner of the cargo, the Master » shall be entitled to a freight in proportion to such profit. »

SECOND QUESTION

Of Freight, in case the cargo is sold

Is any freight due for goods sold during the voyage :

1° for the needs of the vessel ;

2° in consequence of their damaged state :

a) *if owing to a « vice-propre »* ;

b) *if owing to accident (fortune de mer). In what proportions and on which basis?*

As a general principle, il should be said that freight is due for goods sold in the course of the voyage.

If the sale takes place in order to defray necessaries of the ship, it must be considered as a loan, which the shipowner is bound to repay, as a value at the port of destination; consequently freight included. Reciprocally the charterer has to pay the freight.

If however the sale was rendered necessary on account of any fault or wrong being committed, the wrong-doer shall have to bear the consequences of that fault; but then, if the Master, by selling some goods, acted for the sake of the ship's or the charteres interests, it would be unjust if he was to be a victim of his *gestio negociarum* by being deprived of the remuneration to which he would have been entitled, had those goods reached their destination.

As to the case where a sale of goods was affected in consequence of a general average, it comes not under the question before us. If without causing any prejudice to ship or cargo, the Master can take on board some other cargo to replace the goods which he sold, he must do so, and the freight thus earned belongs to him who has already paid for the voyage, viz to the first charterer.

However, in practice, it has appeared proper that the Master should have an interest to replace the merchandise sold ; that is even the reason why the Antwerp average-adjusters, have, since long, adopted a system the results of which proved very good : they allow to the original charterer 75 % of the new freight, and credit the remaining 25 % to the Master as a premium, — of course in all cases where the sale was not effected for the necessaries of the ship.

Now, we apply these principles to the various cases which the Conference has to consider :

1° Supposing goods are sold for the necessaries of the ship :

The Master must place the owner of the goods he sold in the same position as if the merchandise of the latter had reached its destination ; he shall therefore have to pay the full value of the effects sold, and so it is but just that, on the other hand, the consignee should pay the freight.

2° Supposing cargo to have been sold in consequence of their damaged condition :

In such case, the Master acts sagely and prudently and manages with care the charterer's interests ; it would be absurd to punish him for it, by depriving him of the whole or part of the freight.

This is quite clear and needs no explanation when the damaged condition of the goods is owing to a vice propre of the cargo.

But the same solution should be equally recommended when the damaged condition of the goods is owing to an accident (fortune de mer).

Supposing f. i. that the ship has to suffer from a particular average : in such case the accident attains the ship-owner only and consequently the charterer must not intervene. Would it be equitable to adopt a differant solution in the case where the accident attains not the ship, but the one or the other part of the cargo? Would it be just that in such case the Master should have to bear a part of the damage by losing a portion of the freight due to him ? This would be in opposition with the principles of law according to which every party must bear himself the consequences of the accidents happening to him.

Supposing now, that the proceeds of the sale be inferior to the amount of freight; shall the latter be nevertheless enti-

rely due ? It was argued that it should not, as the Master, by selling the goods, only acted as a *negotiarum gestor*, and that the owner could therefore be only liable for the freight up to the advantage which he derived from such *gestio*, that is to say with, as a maximum limit, up to the net proceeds of the sale. The English law was referred to in that direction as well as the general principle admitted (sub I.). But the majority of our commission did not adhere to this solution; freight attaches to the goods even if same should reach their destination in such a damaged condition that they would be without any value. How then, can a sale which has allowed the owner to save part of his estate, modify at the same time the position of things and free the cargo of such burden, which would remain on it, if it had lost all value ? Certainly, this would neither be equitable nor practical; moreowever it would lead to this dangerous consequence that the Master would have an interest to keep on board, rather than to sell, damaged goods, whose condition cannot but become worse by the continuation of the voyage.

Besides, the usefulness of the *gestio* is evident : if the voyage had been continued, the goods would have lost all value although the whole freight should be due ; to the contrary, in concequence of the sale, they have still some value.

In short, in each special case of loss or sale of goods, it must be considered in the first place whether the ship has or not continued her voyage : if the voyage was unterrupted, no freight shall be due, as it has already been stated in reply to the first question ; if, to the contrary the voyage is completed, the whole freight shall be due, even if the merchandise had to be sold.

THIRD QUESTION

Of the Freight in case the vessel is declared unseaworthy.

Is any freight due when the vessel is declared unseaworthy at the port of refuge or cannot complete the voyage, but when the cargo is reforwarded by another vessel and reaches its destination? On what basis and in what proportions?

This question has been very equitably solved by the Belgian law.

ARTICLE 97 of the Law of August 21st 1879 provides that no freight is due for the goods which, after shipwreck, or after the vessel was declared unseaworthy, shall not reach their destination.

If the goods reach their destination at a lower rate of freight than that which had been agreed with the Master of the ship wrecked or declared unseaworthy, the difference in short between the two rates of freight shall have to be paid to that Master. But nothing is due to him if the new freight is superior, the difference in excess is borne by the Charterer.

The article 98, stating that the Master who has contributed to the redemption or to the salvage of goods which did not reach their destination, shall be entitled to a remuneration which in case of parties not agreeing, is to be fixed by the courts, — gives the means to remunerate the Master for the extraordinary work performed by him, and further, it gives to him a direct interest for acting and protecting the charterers' interests.

FOURTH QUESTION

Question of half-freight and Dead-freight

In the case where the charterer cancels the voyage before loading, or loads only part of the engaged cargo, — shall the indemnity due (half-freight or dead-freight) be fixed legislati-

vely, or should the question be referred to the common law as to damages ?

The Commission are of opinion that the most simple solution is the following :

The charterer who cancels the voyage shall have to pay the whole freight, unless he proves that the Master has replaced the goods which he (the charterer) had promised to supply ; in such case he has only to pay the difference of freight, if any, the expenses and losses incurred by the cancelment of the charter-party.

Another system, followed by several legislations is to allow in some cases the half-freight as a lump indemnity, in some other cases the whole freight, and establishing further some distinctions as to ships loading on the berth.

This is the system adopted in article 75 of the Belgian law, the text of which needs however to be more clear.

But the right to break the contract against payment of the half-freight, gives raise to much inconveniences.

Supposing a shipowner or charterer has suceeded to bring together a series of lots of merchandise, and sends a ship to port, or charters a vessel, in order to carry them ; now, one of the sub-charterers, by withdrawing from the contract, may render impossible the whole combinated transaction, although he would only be liable for one half of the freight referring to his parcel. It is not true that the Master shall easily find other cargo ; goods may be scarce, and further, the contracts concluded with the other parties may compel him to sail at once.

The same remark as to regular liners, where cargo is booked sometimes a long time beforehand ; why should a charterer be allowed to cancel the engagement at the last moment ?

In such matters, very considerable interests are generally at stake and every delay involves great losses, as

well to the ship as to the cargo; the Master, who is pressed by time, generally cannot replace the failing cargo unless at very unfavorable conditions, and so he must bear the consequences of another's faults.

For these reasons, it would be proper to extend the system of dead-freight to all cases where the ship sails unloaded. If the shipowner is enabled to fill the space left void, with other cargo, the freight thereof shall have to be credited to the charterer; but the burden of the proof as to this shall always lay on the charterer, as he is the claimant on exception.

FIFTH QUESTION

Delay in loading or discharging

Shall demurrage be considered as an additional freight, or as an indemnity?

Will the debition of same be subordinated to a written protest, at least by correspondence?

If the contract of affreightment is to be considered as a contract of carriage, and not as a contract of hiring, it must be also admitted that demurrage is not an additional freight, i. e. an accessory of the price of the carriage; demurrage is therefore merely an indemnity for a protracted detention of the ship.

But the debition of this indemnity should not be subjected to any protest. If a protest was required, the consequence thereof would be that in most cases, it would be utterly impossible to obtain any demurrage-indemnity, especially if it is admitted — as indeed the jurisprudence of some countries do — that the several consignees are independent the one from the others and that the Master is obliged to protest against each of the receivers at the expiration of their share of the lay-days period.

LOUIS FRANCK, *President*. PAUL BAELDE, *Reporter*

RUSSIA

RUSSIAN SOCIETY OF MARITIME LAW

REPORT

by Mr. V. E. de CREWS, member of the Russian Society of Maritime Law, on the draft-treaty relating to

Maritime Mortgages and Liens on ships

approved by the Russian Association of Maritime Law, in their meeting of May 17/30th, 1907.

ARTICLE 1.

This articles gives raise to no objections. It should be observed that, in order to render more effective the soundness of Maritime Mortgage, it would be highly desirable to provide that mention should be made on the ships' certificate, or on any other similar document, of all rights deriving from securities invested on the ship.

ARTICLE 2.

No objection was raised by the text of this article.

ARTICLE 3.

The proposal to include among the maritime liens, the claims resulting from collisions, does not raise objections, as it is in conformity with the principles already embodied in the draft of maritime Code of Russia.

Further, although concurring, as a principle, with the

tendency expressed by the Paris Sub-Committee, to reduce the number of privileged claims which shall rank before maritime mortgages, we cannot however accept without any remarks the proposal to exclude from the privileged claims such claims as derive from averages, bottomry bonds entered into by the Master, or other debts incurred by him for necessaries, in the course of the voyage. Whatever may be the extension and perfection of modern maritime commerce and international shipping trade, it seems impossible to admit that loans of that kind are no more necessary in practice. If we were now to deprive the claims, having their origin in such debts, of the lien granted to them by nearly all the continental legislations, this would mean that Shipmaster could not any more have recourse, in future, to this form of credit, and so, by preventing the Master to repair his ship, in case of average, and to continue the voyage, we should cause a great prejucice to the creditors on mortgage on whose behalf the Paris Sub-Committee deemed fit the exclude these claims from the category of maritime liens.

The claims for general average also may not be excluded especially from the point of view of the British members of the Committee, who require a lien for the claims derived from a collision, because these latter have not their origin in a contract. Claims resulting from a general-average sacrifice which was effected for the common safety of ship and cargo, deserve, beyond any doubt, to be guaranteed by a maritime lien if one is to consider them from the point of view of strict justice ; and as to the practical side of the question, it must be observed that if these claims are deprived of any lien, this would mean a serious prejudice for the creditors on general average and cannot fail to cause an increase of the premiums of insurance. We there-

fore think it would be proper to adopt again paragraph 5 of Article 3 of the Liverpool draft.

As to the rank of the claims of such category as compared with the other privileged claims — according to the Russian ideas and especially according to the new draft of Russian maritime code, they should be classified immediately after the indemnities due for salvage and insurance, and before the lien for collision-claims.

This rank, which corresponds to the system generally admitted on the Continent, must also be reserved to the claims just mentioned in the next international convention on Maritime Liens.

If however the other States should unanimously classify the liens for averages, bottomry bonds and other loans concluded by the Master during the voyage, after the claims for collision, the Russian Association could perhaps be content not to oppose such decision and would try their best efforts so that the draft of Russian code be put in accordance with that system.

ARTICLE 4

It would seem proper to adopt again the first part of art. 5 of the Liverpool draft as it is apparent that for several privileged claims relating to several voyages, the most recent deserve more attention and protection than the older ones ; and that to the contrary such creditors as have neglected to enforce their rights in due time must bear themselves the consequences of their neglect. Further as to the second part of the article, it should mention also — outside of the indemnities due for salvage and assistance — the claims deriving from averages bottemry-bonds and other loans entered into by the Master which should rank too in the inverse order of their dates.

Article 5

It is doubtful whether the moment where « the creditor was able to enforce his claim » should be taken for the time at which the delay of prescription, provided for in this article, should begin running.

This provision is by far not precise enough and may even undefinitely postpone the expiration of the delay of prescription, which would of course render less solid and more unprecise the position of maritime mortgages, although the object of this draft treaty should be to render its position secure and clear : its seems better to extend somewhat the delay of prescription (although it seems already long enough) but calculate it from the exact moment where the creditor has had the right to enforce his claim, as we would thereby fixe a time which cannot change according to some special circumstances.

As to the effects of the transfer of the property of ships on the existence of maritime mortgages and liens, the Conference ought to have tried some means — without regard to the existing national legislations — to the effect that this transfer should never have any influence at all on the rights of privileged creditors and creditors on mortgage.

It would not be difficult to allow a sufficient guaranty to the right of privileged creditors by inserting in the draft a new article, stating : that a maritime mortgage duly registered according to the laws of the country of their origin, shall be valid nothwithstanding the transfer of the property of the ship;

As to the maritime mortgage if the proposal which is made to make them the object of an international publicity, is adopted (see our conclusion on art. 1), this question would be resolved satisfactorily.

V. E. Grews.

ITALY

ITALIAN ASSOCIATION OF MARITIME LAW

Conflicts of Law as to Freight.

As regards the questionnaire drawn up by the international Maritime Committee an the matters of freight, the Italian Association refer to the study published hereafter which they owe to one of their members, Professor Perrone and containing the motives of the conclusions which the Executive Committee of the Italian Association has arrived at.

First and Third Questions

The Italian Association, considering that questions 1 and 3 should be dealt with at the same time and from the same point of view, move that the Conference should adopt the following conclusions :

In all cases where it is impossible to refrain the exagerated liberty of stipulation in contracts, its seems necessary that each State should fix the principles to which no convention shall make any valid exception.

That freight *pro rata itineris* shall be due on the basis of the voyage performed and in proportion to the goods saved if the latter are saved wholy or partly, in case of the ship being lost or declared unseaworthy in the course of the voyage, whether such loss be due or not to accidents. Dolus, imprudence or negligence of serious nature always excepted.

That such amount as the lessor-shipowner is obliged to disburse in excess for the remainder of the voyage which he aught to have performed (the impossibility of continuing the voyage owing to an accident or a force majeure) must be apportioned by halves between the lessor and the charterer or consignee.

Second Question

That, even if admitting the right to sell cargo (and this as an *extrema ratio*) the whole freight will be due if the sale effected for the necessaries of the ship as concurred to save the vessel ; consequently the value of the cargo to refund to the parties interested must be calculated on the basis of the current price of such goods at the place of their destination.

However if notwithstanding the sale of cargo for the necessaries of the ship, the latter is not saved, the whole freight shall be equally due.

On the other hand if the sale has taken place in the course of the voyage owing to the damaged condition of the goods in consequence of particular average, freight shall not be due in proportion to the whole voyage but only in proportion to the distance effected, and taking into account all circumstances of the case, for instance if it was easy to place the goods at the port of call ; the special nature of the goods rendering them not easily subjected to deterioration ; the risk incurred or probable ; expenses made and any other similar circumstances.

For the same reason, in the case where a sale was caused by the damaged condition of the goods owing to an accident, freight shall be due in proportion to the distance effected.

Fourth question

We are of opinion that the systems of the half-freight and dead-freight should be set aside and that reference should be made to common law as regards the solution of the question of damages.

Fifth question

Notwithstanding the inconveniences to which a ship-owner may be subjected and which we cannot fail to mention (for instance the case where the real consignee endorse the bill-of-lading to a person in bankruptcy and thus succeeds to withdraw his cargo without being bound to discharge this liability as regards demurrage) the Italian Association express their opinion that demurrage should be considered as an indemnity and not as an additionnel freight or as an accessory of same which would be guaranteed by the same lien.

The claim for payment of demurrage must not be subordinated to any protest, whether written or verbal.

Naples, August 1907.

Prof. A. Marghieri
F. Mirelli
Prof. Fr. Perrone, *Reporter*

REPORT

on the questions submitted to the Conference on Maritime Law of Venice

BY

Professor FRANCESCO PERRONE, advocate

SUMMARY

PRELIMINARY QUESTION

Exlusion of the questions relating to the carriage of passengers: importance of these questions to-day.
New elements which may have influence on the principle of the affreightements.
Questions proposed in view of a next conference.
General remarks on the questionnaire on freigt submitted to the Conference.

FIRST AND THIRD QUESTION

Remarks on the question.
Divergencies between the ruling systems.
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OBJECTION

For the proportionality, the juridical character of the obligation is not an impediment.

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Remarks on the question. Exclusion of the precontractuel events.
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Fifth Question

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PRELIMINARY QUESTION

Exclusion of the questions relating to conflicts as to affreightements for the transport of passengers; their importance to-date

The Maritime Law Association of the Netherlands had expressed the desire that the questions of conflicts of law as to freight should be put on the agenda paper of the Liverpool Conference (1905) which would have to examine whether on this matter a uniform solution could not be arrived at which may adapt itself to modern maritime trade. The International Maritime Committee has, in consequence of this, drawn up a very precise questionnaire containing also a question on the general principle; the Venice Conference will now have to express their opinion on the whole matter.

Now the importance of the first question of general character is limited by the text of the other questions which follow and which do refer to the carriage of goods ; so that the matter, as it is submitted to the Conference, excludes all discussion as to transport of passengers.

However it must be remarked : that the persona humana constitutes for the shipowners a carge which pays well and is rich; that furthermore the transport of passengers has taken since a few years a considerable extension, especially with regard to some ports. This increase is due to several reasons : tourists growing more and more numerous, the emigration becoming always larger and affecting especially some countries, the always increasing requirements of commerce and industry; the facility of the transports at lower and lower rates; this extension is also due to the fact that several States — as is for instance the case here in Italy — now meddle with transports, approve the rates for the transport of passangers and even fix them by them-

selves if the rates submitted to them seem unsatisfactory; that furthermore international trusts concluded between shipowners refer to the transport of passengers much more than to carriage of goods; finally if considering from a fininçial point of view the great market of freight and passage rates, one cannot fail to be convinced that it is a necessity to have on this subject uniform provisions, including also the matters as relate to conventions and contracts.

For this reason we think it would be well to put on the agenda paper of a next Conference all the questions relating to the transport of passengers. In fact if the old questions of doctrine and practice (which are nevertheless still interesting), deserve a careful study, there are a many still better reasons to solve the problems raised by this new industry : the transport of emigrants, considered as well from the point of view of individuals as from that of great numbers.

New elements which may have influence on the principles of the affreightements

With regard to the notion of transports itself, the element freight as undergone a complete change. In former times the passenger paid nothing; he was considered rather as an accessory travelling with the cargo; later he was considered as a pilgrim and, if he had to pay anything at all, it was but very little. At present, on the contrary, the transport of passengers, especially of great numbers of persons, form the principal object of the navigation companies, because the money paid by passengers leaves far greater profits than carriage of goods; ships sail most to ports where they may carry passengers to or from. Italy is an example of this : at this very moment ships of all nationa-

lities are coming to its ports, engaged in the transport of emigrants.

To-day two great phenomenons may be observed : the first relates to the freight market for which the old theory of offer and demand has lost its value, because speculators and financiers have also directed their efforts towards this branch of activity. The Bankers of Boston and of New-York, the merchants of Antwerp and London, those of Marseilles and Bremen as well as of Genoa and Napels are engaging in speculations on the passage monies and on transports in general.

On the other hand shipowners conclude private and public contracts; they organise conferences, pools and rings in order to resist and to defend their interests ; they organise trusts with the object to obtain higher rates of freight.

The second phenomenon is the gradual diminution of the liberty of contract which may be observed unter three forms with various sanctions :

a) Shipowners to wathever nation they belong, if they transport passengers to America, must submit themselves to the laws of the United States;

b) The contract of transport in his four elements : ship, freight, carriers and passengers; and we explain here the reasons :

A. — The American law imposes a taxe for each passenger landed there, so that there is a new element adding itself to the other basis of freight;

B. — American law further defends to land some categories of persons ; these the shipowner is obliged to send back home and he has also to discharge a certain liability towards the passengers. This is an other element which must increase the freight.

But this is one of the conditions of the contract between

carrier and passenger; this is also a point which the next Conference will have to examine in relation to the question of the conditional contract.

c. The american law also provides that the ship shall answer to certain hygienic requirements and that it shall be furnished with the necessary live-saving apparatus. In case of non compliance with these provisions, it imposes a fine on the Master personally; so this new additionnal risk has also a serious importance with regard to the calculation of the passage money.

We may safely assert that in Italy, with relation to freight questions, a real legislative revolution has been effected and, we should add, almost unconsciously. So for instance, freight may be conventional if it as been fixed by a pool between shipowners or if it as a competition freight; it may also be fixed or approved by the Goverment; but these two forms only apply to the oversea transport of emigrants effected by Italian carriers or by foreigners duly authorized by Government. For this latter there exists in Italy the Emigration commission which is an institution of supervision and protection (art. 14 of the law on emigration).

Neither are all these freights dependent on the rule of offer and demand: variations of the rates may be ordered or brought about by the Italian authorities.

Passage rates may vary according to the condition of the passengers: whole freight, *nil* freight or partial freight, whilst passage money for the various categories of emigrants may be gratuitous, freight of subsidy, or passage worked out.

Finally there may be still drawn a distinction between passage money for cabin passengers and emigrants according to the liabilities which may attach to each of these transports.

Questions proposed in view of a next Conference

Among the questions which it would be useful to submit to a next Conference, we may indicate the following :

a) how could it be prevented that laws of a State may render conditional a private contract of transport and cause thereby prejudice to the interests of foreign shipowners? (Law of United States re transport of passengers).

b) should the intervention of the public authorities be admitted, as a principle, in the fixation of passage moneys or could the intervention be justified in some cases? If so what principles ought to be adopted in positive maritime legislation?

c. if free foreign speculation on the passage-rates is admitted, how can this be reconsiled with the principle that the Government is allowed to intervene in the fixation of freights?

d) should agreements concluded between foreign shipowners with relation to passage-money be limited by intervention of public authorities or by text of law? If so how could retaliation between the States be avoided, without causing prejudice to the emigrants' interests?

General remarks on the questionnaire on freight submitted to the Conference

The five questions under discussion are questions of principle but may give raise to a great many of other questions. They may be reduced to four because the first and the third questions nearly refer to the same object.

In the third question it must be remarked that in the English text the expression is : « the vessel is declared unseaworthy » whilst the French text runs : « le cas où le navire est condamné ». Now it seems necessary to explain

very clearly the meaning of these two expressions. They mean that the ship is not in a fit condition to sea, « hors d'état de naviguer », as the text of article 297 of the French code has it, that is to say that the ship is at the time not in condition to navigate, but that she is not definitively declared unfit and that she can be repared.

There is another question still, whose importance is decreasing gradually : it relates to the sale of goods in the case of the voyage referred to by the question sub 2°.

It must be considered that the speed of the ships increases regularly whilst prices decrease ; that steam and electric power gradually replace sailing ships and that thereby the duration of the voyages is much shortened ; that the voyages are effected more regularily and with a greater security ; for all these reasons it only seldom happens that the Master is compelled to sell cargo for the necessaries of the ship or on account of average. The art of nautical architecture has undergone a complete change ; the stregth of the ships is much greater ; all these circumstances diminish the probability of the sale of cargo ; finally the regular liners have representatives in all ports where they call so that the Masters have no difficulties whatever to pro vide everywhere the necessary means without recours to engaging or selling cargo to which they had to ressort in former times.

Presently there are with all countries of the world communications by telegraph and by telephon ; institutions of credit are established in all localities even in those of small importance : all this allows the Master to procure very easely the money he might want without selling part of his cargo.

Tramp steamers become fewer ; sailingships are gradually abandoned for a more speedy conveyance ; further sailers

only transport goods of lesser value or cargo which is less subject to deterioration. In short the causes for selling cargo which existed in former times do not exist any more at present. All these remarks therefore only add weight to our conclusions.

We shall now examine the questions as they have been formulated.

First and third Questions

Preliminary remarks

We must observe in a first place that there is a marked tendency to introduce a uniform bill-of-lading drawn up in English in the English language, notwithstanding the opposition on the side of some navigation companies, more especially the German companies, who attach a very great importance to the use of their national tongue, as they think there is a direct relation between the preponderancy of the language and the maritime supremacy to which they aspire. (1)

(1) The language follows the movement of maritime trade so as to make us believe that the maritime supremacy of a State also confers the preponderancy to his language Indeed the Italian has had formerly such preponderancy, namely at the beginning of the XIX century: it was everywhere recommended to clerks engaged in trade to study Italian and those who had the knowledge of that tongue had always a preference. At that time the Italian and Spanish languages were so to say in some way the official languages of maritime trade which was then developing itself in the Mediterranean towards the West Indies. At present, on sea, our language and the Spanish tongue have been replaced by the English language. The latter may be said to have become the official language, the universal idiom of maritime trade so far that in all ports of America, Asia and even of Europe, the French navigation companies — and this says very much — draw up their bills-of-lading in English. The same may be said of the German companies. However we must name as an exception the Ost Africa Linie which has German bills-of-lading for the coasting

In fact, most of these documents contain the clause to which we allude, which is validly agreed between parties and according to which the whole freight is always due, whether the ship reaches or not her destination.

The expressions used are: « lost or not lost », as referring to the ship or « prepaid or not prepaid, (which means freight paid in advance or payable at destination) as regards freight. » (2)

Such conventions are also in use for the transport of bills and other valuables which is generally effected on special forms of bills-of-lading. Whether these things be lost with the steamer or otherwise, freight is always due.

The question being thus considered, and seing that such clauses are accepted by the charterers without opposition; considering the effects of such clauses in regard to claims for average; taking also into account the existence and the validity of other conventional clauses according to which charterers have also to pay expenses for the carriage of their goods, it seems evident that resolutions moved by the Conference would be quite useless if they should preconise rules in opposition with the customs admitted everywhere. Besides in our opinion it is useless to oppose these customs of commerce since they do not lead to any serious inconveniences.

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service; the Italian company Navigazione Generale, using Italian documents whilst la Veloce has bills-of-lading in English. Even the Italian sailing ships and others in general adopt — for their Bill-of-lading English forms of documents. In short we may say that on the International market of maritime transport, the forms of bills-of-lading printed in English are everywhere in use.

(2) See bills of lading of the Navigazione Generale, of the Italia and of the Veloce, art. 3, 13, 17; also the documents of other navigation companies.

Historical review of the Question

The questions 1 and 3 are not new; they do not only refer to the maritime trade, transformed at it is now. They apply to the case where the ship is lost by shipwreck and have been solved in this way that the transport which was not performed, may be repeeted, save in the case where loss of the ship the is due to the bad stowage of the goods or to dolous acts or fraud on the side of the owner of the cargo and save also the case where the loss of the goods is owing to a delay for which no fault can be imputed to anybody. (1)

But in former times no special attention was given to the case where the cargo was wholly or partly saved notwithstanding the loss of the ship. However this case was considered as included, as it may be supposed from Kuricke. (1)

We may say that according to the old doctrine, inspired by the maritime customs, it was decided that the charterer had to pay to the shipowner a freight in proportion to the distance effected up to the moment where the ship was lost or became useaworthy, with some modifications and limitations.

This doctrine was adopted lateron into the positive legislations; but subsequently the ideas changed, as some doubts were expressed as to the justice of the principle. There were even some legislations, as for instance the Belgian Code — and in England and in the United States there is a tendency in the same direction — which, referring

(1) The *Kuricke Reinoldi* in his work *Resoluti questionum illustrium*, questio XXXIV, page 839, as well as in the *jus maritime hanseaticum*, art. I Tit. IX, deals with the various cases admitted by the old doctrine of the School.

themselves to the equitable side of the question, abandoned this principle.

In France, in the draft of 1867, the principle of the abolition of proportionnal freight was adopted. The Chamber of Commerce of Marseilles, deliberating on that question, emitted a contrary vote, whilst subsequently the Congress of Antwerp (1885) and that of Brussels (1888) could not come to an agreement on that question ; but the former expressed the opinion that if the Master had not carried to destination the goods entrusted to him, no freight was due, whilst at the congress of Brussels it was said that some freight should be due and that its amount should be calculated on an equitable basis according to the profit which the partial voyage would represent for the charterer.

Divergencies between the ruling systems

He who reads the provisions of the various codes and goes then through the doctrine which explains these provisions, finds that there is a considerable divergency between the solutions arrived at. The Belgian law of 21 August 1879 in his article 97, copied textually the principle of the French draft as regards the fundamental innovation and consequently abolished the proportionnal freight due according to the distance effected. The rule of Sheffield pronounces in favor of the principle according to which no freight is due. Article 630 of the German code (art. 632 of the old one) provides as follows : « if after the commencement of the voyage the ship is lost in consequence of a force majeure (by accident, « Zufall », art. 628 sub. 1°) the contract of affreightment is cancelled.

However as regards the effects which are salved, the charterer must pay freight on the basis of the proportion

between the distance effected and the whole voyage as it was stipulated. This is called *Distanz-Fracht.*

Distance freight must be paid only up to the value of the goods.

The rules of Oleron (art.4 & 30 of the Guidone del Mare, VI, 7), have been the origin of art. 2, book II, tit. II of the Ordinance of 1821 and lateron of the French code which is now ruling law, (art. 296 & 303). This latter provided that in the case where the ship is repaired and in the case where repairs are impossible, the Master is bound to charter another vessel. If he is unable to charter another ship, freight is only due in proportion to the voyage effected.

The Spanish code (in the 5° of art. 588), deals with the case where the repairs necessary to put the ship in a state of seaworthiness would exceed 30 days and provides that in such case the charterer may cancel the contract if he pays freight in proportion to the distance already effected.

The Italian code deals with the case where it is impossible to repair the ship and establishes the principle that freight is due pro rata itineris, that is to say in proportion to the distance effected. However, if it is proved that the ship was in a state of unseaworthiness before sailing out, no freight is due and the ship is even liable for damages towards the charterer (art. 570 & 571).

Comparison between the case of the loss of the ship and the hypothesis of unseaworthiness

It seems that at present it is meant to exclude the liberty of the parties as regards the first and the third question. There are several reasons, both economical and juridical, in favor of the admission of the uniform principle. In all cases where the ship is lost but where part of the

cargo has been saved, the most logical principle seems to be that of the freight *pro rata itineris* and we think it ought be expressed distinctly.

But the case of the loss of the ship may very well be compared in our opinion with the hypothesis of the impossibility to effect the repairs and where a damage was discovered which rendered the ship unnavigable. Further by loss of the ship should not only be understood the material loss of the vessel but also the case where the ship must remain inactive for some time during which repairs must be effected, which delay would prevent the continuation of the voyage. With regard to the consequences of the voyage on the charterers, point of view, the result is the same in both cases.

Proportionality of the freight

The arguments in favor of the principle of the proportionality of freight are of an economical and juridical character and may be summarised as follows :

a) if the object of the voyage is not entirely accomplished and if this is the consequence of accidents owing to a force majeure or the risks of the sea, we cannot decide that the charterer shall be wholly exonerated from the consequences : the consequences of a fortuitous accident must be borne by all those who are victims of same ; if to the contrary the carrier only should have to be liable for the losses, this would be in opposition with logic and to justice and in direct contradiction with the above-mentioned principle.

b) In the case where the contract is partially executed, a partial remuneration must be due, provided always that this partial execution constitutes an advantage of which

the charterer or others in his stead have or may have the benefit;

c) supposing that the charterer has derive a partial profit from the incomplete transport, it is but just that he pays the carrier in proportion to the profit which he has or shall obtain;

d) the intention to execute and the partial execution entitle the Master to a proportional remuneration;

e) maritime commerce establishes a close connection between the parties engaging in same: consequently all those who cause impediments to it must bear the risks thereof;

f) supposing the interruption of the voyage occured at a little distance of the place of destination of the goods and supposing it to be easy to carry the latter further to destination, it would be a downright injustice to deny to the carrier any right to a proportional freight which should represent in such case almost the whole freight as stipulated in the contract;

g) to the contrary if the interruption occurs at the beginning of the voyage, the charterer cannot suffer a heavy loss as the proportional freight to pay would be a mere trifle;

h) suppossing that the interruption of the voyage occured at a port situated outside of the route of the ships and that, in consequence of this, the goods are of no use to the charterer, it must be considered that this is merely is misfortune belonging to the risks of the sea. Nothing prevents the charterer from insuring the freight even in such case, and if the insurance companies do not accept risks of this kind, why do the shippers not try to create a mutual assurance institution?

OBJECTIONS

For the proportionality, the juridical character of the obligation is not an impediment

It is said that the obligation assumed by the carrier is indivisible ; but this is not an insuperable impediment.

The obligation deriving from the contract of carriage does not seem, by his own nature, to have this character of indivisibity ; to the contrary, it may be fractioned in most cases.

The prestation in itself does not represent an act or a thing which may not be divided materially or intellectually as would be the case of a predial service or the production of a document ; indeed in the partial and incomplete carriage there is a prestation the nature of which is identical to that of a total execution : it differs only as to the quantity ; but it cannot be said that it does not exist. Consequently it may not be affirmed absolutely that it is indivisible.

Everybody knows that since the times most remote this conception of the indivisibility constitutes an insuperable difficulty. Molinases, after twenty years of intense labour thought to have discovered the solution of the difficulty ; Pothier has continued his task : however darkness is always as thick on that question.

Besides the distinction as to indivisibility does not involve any doubt as to the efficiency of the prestation if it be compared with the objects which form the activa and the passiva of the obligation. But here we may come to an understanding, as is generally the case between debtors and creditors, save when the first could require the execution of the whole and when, as a consequence thereof, the latter should be bound to effect it ; only in this latter hypothesis, it could be said that there is indivisibility.

However in order to have a typical example representing an indivisible obligation, it would be necessary to take such kind of prestation as would not admit of any division without modifying at the same time the character and the nature of the obligation as considered in itself and as it was conceived in the commun intention of the parties.

It is true that from the point of view of one of the parties' intentions (the charterer's) the obligation might be considered as indivisible; however the intention of one party interested is not that of all parties; and further the fact of the loss suffered by the ship must certainly have also its influence on the solution of the question.

Other Objections

It may happen, it is true, that the unseaworthiness or the loss of the ship occurs at such a place where it is either impossible or too expensive to reforward the cargo to its destination. But such case would be exceptional, in the present state of the navigation; and the legal provisions of former times are therefore coming into opposition with the requirements of modern commerce. The maritime routes, on which the steamers of the navigation companies are regularly running, the very great number of vessels, some of which even receive subsidies from the Governments, either for their construction or for their navigation; the international conventions as to the routes at sea, the 50,000 ships, big and small, which are playing between the various ports; the fact that to-day, navigation is conducted by powerful companies, most of which are united in *trusts;* the direct relation existing between all these circumstances, — all this comes to corroborate our conclusions.

It is true that, if the transport is not completed up to

the place indicated in the charter-party, the obligation undertaken is not executed, as a port of call or refuge is certainly not the place stipulated in the contract. But we are now discussing about freight partly earned for a partial service rendered. It is true also that the delay involves a loss for the charterer and for the consignee; but delay, if any, is only to be attributed to the risks which the shipowner has certainly not brought about, nor did he wish to occasion same; besides, he must suffer thereby himself too; the same is the case of the principal sufferer.

But the resolution of the Conference, if we wish it to be just and practical, must be compassed within very precise limits. We think therefore that the Conference should specify the cases in which a *pro rato itineris* freight shall be due; these cases should be: that where a force majeure or a fortuitous accident prevent the continuation of the voyage, the loss of the goods, or the impossibility to effect the repairs required by the carrying ship.

If there was a heavy fault, or a *dolus*, and consequently a case of responsibility, there could, of course, be no question of liberation or exoneration, and therefore no freight should be due at all.

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But if admitting that freight should be due, what is the juridical solution to be admitted?

It is necessary to follow a principle which puts an end, if possible, to all litigation, which gives satisfaction to all parties in general, and to every interest involved in particular.

We explain: The distance may be a decisive basis of appreciation in some cases; but always when the risks run or still to be run, the expenses disbursed or to disburse, the inconveniences for the shipowner, the eventual facili-

ties with which the cargo could be deposited or sold at the place where the voyage was interrupted, when the merchandise, owing to its special nature, is not easely subjected to deperdition, but when the delay 's sole inconvendence is that it renders improductive the capital engaged in same-all these points me be a basis for appreciation which may be of serious imoort, and for that reason, ought to be taken into consideration with a view to legislative provisions.

The solution based solely on the computation of the distances, which may be effected by means of a purely mathematical operation, by deducting from the total distance that which remains to be performed, — may be a very easy one; but we think it to be very defective. Simple though it be, this mode of calculation seems, in our opinion, to be absurd.

We must not only take into account the profit which the partial transport represents for the charterer, but also, and especially the sacrifices to be made and already made for the remainder of the voyage.

The limitation to the only cases where the loss of the vessel is owing to an accident (fortune de mer) : this is the correct construction of the term « distance effected », and consequently, this is also the question on which the Conference shall have to agree.

Synthesis

Seeing that we have to consider all the sides of this intricated problem;

That his is equitable, in case of loss of the vessel to interest the representatives of the shipowner or of the carrier, in, and to oblige them ta, the continuation of the voyage so that the goods reach their destination;

That it would not be fair to lay on the ship only all the consequences of the disaster, because navigation is also undertaken is the interest of the cargo ;

That is also unfair that the cargo alone would have to bear these consequences in the case where the cargo is deposited in a place unfitted for that purpose, or if it is lost in consequence of delay or of any other causes.

SECOND QUESTION

After the foregoing remarks, the importance of the second question is much lessened, and it shall still decrease, as we have pointed out in the preliminary remarks.

We now shall examine the second question and draw our conclusion.

Historical view.

The controversy contained in this question finds its rule in the ancient law, which made a distinction between the case where the ship arrived safely, and the case of its loss ; in the first case, it provided that freight should be deducted by the Master, who, in his turn, would have to refund the value of the cargo sold on the basis of the market price at the place of destination.

In the second hypothesis, viz in case the ship did not reach her destination, the question was raised whether freight should be due proportionally to the distance effected, and whether the value of the goods sold should be refunded on the basis of the sale-price at the port of loading, or at the port of destination.

Now, as to the first case, the ancient laws as well as the more recent ones, all agree that the whole freight should be due, as it represents the liability attaching to the transport. To the contrary, in the second hypothesis, the con-

troversy still exists ; we therefore submit the question to the Conference.

The French system is in conformity with that followed in Belgium. There is merely a difference of wording between article 93 of the Belgian law and article 298 of the French rule, the second paragraph of which is textually copied by the Belgian law.

The Italian code modifies the expression in the first part of article 575 : it compares the fact of the sale to the fact of the goods being pledged ; but for the rest, it is in conformity with the French and Belgian codes, which are in some sense an extension of the principle contained in the Ordinance of 1681, book III, tit. III, article 14, and the complementary French law of June 14th, 1841. The German code, in articles 535, 538, 540, 541 and 641 and following, provides as follows with regard to this question: « Cargo may be sold in extreme cases, for instance if the goods are subjected to a grave alteration or to an imminent deperdition ; the goods may be pledged or sold if that be necessary for the completion of the voyage, But before selling, the Master must try to obtain the necessary means by pledging the goods ; whilst, for the value of the goods to be refunded, account shall be taken of the commercial or ordinary value of goods of the same nature and quality at the place of destination, under deduction of the expenses, custom-rates and freight ; if the real place of destination is not reached, the port where the voyage comes to an end shall be considered as such, or the port where the cargo is deposited, if the voyage has come to an end in consequence of the loss of the ship, according to the ruling laws.

Sale of goods for the necessaries of thc ship.

The term « besoins du navire » must be constructed in a broad sense. This expression is sometimes replaced by

« urgent necessaries »; the one is worth the other, as both derive from the old expression « nécessités du bâtiment », which was used in the Ordinance of 1671. The pleonasm could be avoided, but it is of no consequence from the juridical point of view. For the same reasons, it must be admitted that the expression refers to the necessaries of the navigation in general, and not merely to the ship, that is to say, the material object which requires repairs. Supposing for instance that goods are sold in order to supply with coal a steamship; this sale must be considered as having been effected for the necessaries of the ship, seeing that coal is indispensable to a steamer (1).

In the conflicts of interests, as well as in the great struggles between nations, it is always the most important interest which prevails, or at least that which, altough not being the most important interest, appears to be such on account of some special circumstances. The principle is admitted here; the minor interest, — that of the charterer — shall be overranked by the greater interest of the navigation: *ubi major, minor cessat*, as well in practice as in the laws.

Such is the principle; but it ought not to degenerate in practice and its application ought therefore to be limited very clearly.

This faculty given to the Master, must be considered as an *extrema ratio*; it should be required that before resorting to it, the crew should have to formally express its necessity. Then, other guarantees might be added for the third parties, charterers, for the shipowners responsible for it, for the insurance companies. But if we were, by a law text, to deny the exercise of this extraordinary right, it would be not only unjust, but also absurd. There are cases

(1) The French code is more clear, whilst the Italian code only mentions the ship, and might therefore give raise to misconstruction.

where such sale becomes an absolute necessity, notwithstanding all defences or contrary provisions.

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It seems that the Conference ought not to vote resolutions which would be in opposition with the systems admitted by the legislations presently ruling. Indeed, by encashing the freight, the shipowner exercises the legitimate right of him who performs his duty. Freight is the liability of the transport; it is the remuneration which is due to the carrier-shipowner.

It is true that the goods do not reach their destination; but it is also true that the Master pays for the sale, which he was compelled to effect for the necessaries of the ship, the value which the goods would represent at the port of destination. The charterer, or another in his stead, or the consignee, or another for him, may claim exagerated amounts and ask an absurd price for the goods sold. Such source of conflicts we cannot suffer to subsist : the price of the goods is the only available basis; one thing only replaces the goods sold: viz the money which represents the exact value of same. That which would be to be regretted is not as much the freight to be paid, or to be deducted at the time of the settlement with the parties interested; it would be much more the fact that the ship saved should have alone to bear the consequences of the sale effected in the course of the voyage at a price which is not inferior to that which must be disbursed, and especially if this sale has taken place for the sake of the cargo itself; for if the voyage had not been continued, if the ship had been wrecked or if it had suffered other damages, the interests of the charterers and of the consignees would have been prejudiced much more.

Sale of the cargo for the sale of the ship not saved

If the goods are sold at a port of refuge or at a port of call, — whether conventional, ordinary or forced — the question raises whether freight shall be due wholly or only in proportion to the distance effected, that is to say, calculated up to the place of sale.

He who compares this hypothesis with a forced loan concluded by the charterer, by means of the amount he obtained by the sale of his goods, would come to this conclusion that if the ship is not saved, the charterer would have no regress at all against the Master, save for the reimbursment of the proceeds of the sale, whilst freight would be due proportionally ; consequently, if the freight had been paid wholly, he would be entitled to have it calculated at the place of sale.

Others, although admitting the principle of the prestation under compulsion, do not draw the same consequences but argue that freight should be paid according to the bill-of-lading, because by claiming the price obtained for the sale of the goods, the charterer he jas received what was due to him.

He is in the same position as he who during the voyage, takes back his goods ; in such case, he owes the price of the carriage, that is to say the whole freight (1).

It seems to us that the principle embodied in the laws

(1) Several legislations admitted this principle; a. o. the Italian law (575), the Belgian law (93), the French code (298), the code of the Netherlands (480), the Portuguese law (555). Even the German code (former art. 611) provides that from the refunded value, freight should be deducted. The same is provided by art. 612 of the new code. English doctrine is divided on that point. Vallin and Pothier have concluded in favor of the proportional freight, and the principle of forced freight (Emerigon and Abbott) is opposed by Maclachlan.

cited in the notes, should be adopted and for the same reasons, the Conference should conclude in favor of the tendencies of the doctrine towards the uniform views which are at present admitted in the legislations. The Master effected the sale of the cargo because a higher and common interest imposed same; but events have annihilated the result.

Now, if the Master refunds all he has received by selling goods belonging to others, that part which the charterer has to bear in the disaster is really trifle, seing that it amounts only to the difference of that part of the freight which he would have saved if it had been equal to the freight proportional to the distance effected. The risk of the sale shall remain for the cargo owner's account; if the net proceeds of the sale are higher, he shall receive the real cost of the goods; but if to the contrary the goods are sold at a lower price, he shall also have to bear that partial loss. And as he would have had to pay freight in the first hypothesis, so he shall also have to pay it in the second case. It should not be forgotten that freight represents for the shipowner the remuneration of the carriage, considered from its commencement up to its termination with all risks and expenses referring to it; that the consequences of accidents must be borne as well by the charterer as by the other estates involved in the venture and who derive any profit whatever from same; that by aggravating the position of the shipowner, and by imposing on him the burden of greater responsibilities; this would mean in fact that the cargo enjoys a privileged position; in one word: this would mean that with one hand is given what the other takes away.

Sale of goods in damaged condition owing to a vice-propre

What must be understood by « *vice-propre* » ?

This means a defect or a special disposition of the goods, particular to the goods themselves, so as to involve damages and thus oblige to sell them.

As a « *vice-propre* » must namely be considered the internal moisture, normal and unavoidable friction and shakes, if in consequence of these circumstances, the goods had to be sold. As rust, fermentation, internal combustion, are all cases, which in the normal course of a transport, cannot be avoided, and consequently, all damages resulting therefrom must normally be considered as « vice-propre. »

* * *

As it is in accordance with the principles of sound logic that the shipowner must not suffer if the loss of the cargo is caused by the particular nature of the goods, it seems to us that one cannot arrive to another conclusion in the case where the goods had to be sold in consequence of such damages.

In such case, freight should be paid, not in proportion to the distance effected, nor on the basis of the whole distance at which the goods ought to have been carried, but on the basis of a lump sum, the amount of which shall vary according as we deal with the first or with the second case.

In case of sale in consequence of the damaged condition of the goods, there is always the will of the carrier. It is true that the sale was caused on account of the special nature of the goods : still, the will of the lessor was required.

As the holds become void in consequence of the sale, if the Master takes other cargo instead at the port where he calls, a new freight adds itself to the first one ; at least part of that new freight enriches the Master unduly. Further, after the sale of the goods, there is of course a diminution of responsibility, as the Master or the owner ceases to be liable for the custody and other obligations in relation to such goods, and for which they would have to answer up to the delivery at destination. Under these circumstances, the right to the whole freight must be likewise reduced in the same proportions. On the other hand, freight also includes a remuneration for this liability, and as the latter ceases partly to exist, the right to that part of the remuneration falls away too : such reasons exist in all cases, after the sale, even if the carrier should continue the voyage without taking any further cargo to replace the goods he sold. So, the whole freight would never be due.

If the loss of the ship occurs in the neighbourhood of the port of destination, it would be unjust if the shipowner should lose the freight after having carried the goods so far. It is objected that this never happens ; that the sale in consequence of the damaged condition of the goods never is effected in the vicinity of the port of destination, where, doubtless, the consignees or receivers could take the necessary measures.

But the sale may be necessary by an internal alteration of the goods or also in consequence of leakage. It may also happen that on account of disease or an epidemy on board, it is feared that the cattle will die ; in all such cases, we are of opinion that the whole freight is not due.

A distinction should be made between the case where the cattle die on board and the hypothesis where there is fear that they will die.

In the fist case, there is no will on the part of the owner;

in the second case, this will exists. The loss may not be confounded with the sale. (1)

* * *

If freight is due if the sale of the cargo is the consequence of an accident

The same reasons put forward for the case where the goods are lost by accident, also exist as regards the consequences of the damages, that is to say, for the consequences of the sale of goods damaged owing to an accident.

In the first hypothesis, freight is not due ; if freight has been prepaid, it must be refunded Only a proportional freight should be paid for the goods saved but not carried. (2)

Some legislations provide for special cases ; other only contain some general provisions.

Fourth Question.

The question submitted to the conference implies a regular contract between carriers and charterers, and deals with the case where the charterer cancels the contract before loading any goods, or only supplies part of the goods engaged, and it is asked whether reference should be made to common law for fixing the indemnity, or whether the half-freight or dead-freight should be paid ?

This question diverges from other questions, with which

(1) The German code (619), the Portugese code (555). the Danish code (151), the Finnish code (106), expressly provide that freight is due in case of loss of the quality of the goods.

(2) German code (618), Italian code (577), French code (302).

it is in a direct relation, viz those questions which preceded the conclusion of the definitive contract and the consequences resulting from same, whether it be executed or not. In other words ; if any liabilities should result from the precontractual transactions, they form a different point, which is not now submitted to the Conference.

It shall therefore have to be examined by a next meeting.

* * *

In the first place, we must observe that in commercial practice, there is always much tolerance as to the quantity of goods to be loaded, as well as regards an excess as a shortage, especially in the ports where there is a regular movement of ships, in the end ports of the lines, for frequent destinations where ships come and go regulary.

We may further remark that in case of shortage on the loading, it is always the charterer solely who is to bear the consequences, because all shipowners insert in their bills-of-lading clauses by which they exonerate themselves for any liability on that head. In such clauses, it is said « that the shipowner has to option to embark the goods by that steamer, or a following » and « that cargo is to be embarked according to requirements of the holds » etc. etc. Now, as these clauses are valid, the shipowner may, if he so choses, embark but little or nothing on his steamer ; the Conference should take these several circumstances into consideration when formulating their resolutions.

The legislations fixing the obligation to pay an indemnity equal to the half-freight in the case where the voyage is cancelled before any loading, thus give the means to avoid the inconveniences of a judicial settlement, which is

always lenghty and expensive ; they much facilitate thereby commercial transactions. On the other hand, they corrobarate the remarks which we have put forward.

A distinction should be drawn :

If the affreightment is concluded for a whole ship, it is but just that, if one loads less, he be also liable for the remaining freight, and the charterer shall profit by the freight paid for other goods which, by his consent, have been taken to complete the cargo.

If to the contrary, the charter bears only on part of the ship, then the real difficulty is raised.

The Italian code, in its article 564, provides that half the freight shall be paid if the contract is cancelled before the departure, and that the whole freight shall be due if the charterer does not declare to cancel the contract before the departure of the ship or if he supplies less cargo than he has engaged.

It seems to us that reference should be made to common law. But as regards a contractual resiliation, we think it better to solve each case according to its special circumstances.

The systems of half-freight and dead-freight do not solve the difficulty, nor do they allow a complete settlement of the losses sustained. No doubt they will soon be abandoned in the commercial practice.

FIFTH QUESTION

Divergencies of doctrine and law

If going through the doctrine and the texts of law, one can easily perceive that there are most striking divergencies between the doctrine and the jurisprudence. This has, of course, very appreciable consequences on the industry of

carriage by sea which is becoming more and more international and uniform, and although contracts and local custums are of much weight in this matter, still an international agreement could intervene on the points on which there are discrepancies and would, no boubt, engage all parties interested to adhere to the conclusions of the Conference.

The Spanish code (744 and 745) and the Bresilian code (592) admit demurrage as provided in the contract, and also demurrage due according to the local customs. The Norvegian law (44 and 48) and the Finnish law (91 and 96) fix the delay of demurrage in the case where parties did not stipulate same. As to Italian law, it contains no provisions as to the delay of loading and discharging, and in art. 547 and 549, deals with the contracts and customs.

In the code of the Netherlands (art. 464 and 457) it is admitted that demurrage shall be due according to contract.

The French code as well as the Spanish law (274 and 294) the German code (567 and following (which correspond to art. 568 of the old code) recognise the right to an indemnity from the term of the demurrage time in the case of a charter of a whole ship. So, parties may fix in their contract the extreme delay for demurrage.

According to English law, the delay of demurrage must be stipulated in the contract.

Juridical character of demurrage

It may be said that in the theory two different currents of ideas are perceptible with regard to the juridical character of demurrage.

Some consider it as an additionnal freight; others say it is merely and indemnity for delay; but as was the case in ancient law, the existence of demurrage does not involve in it self the cancelment of the contract : it gives only raise

to the obligation to pay an equitable indemnity. However and in opposition with classical law this indemnity must not be considered as an conventional penalty. Demurrage called in France « surestaries », in Germany « Uberligezeit » run from the time when the laydays come to an end ; they cause a damage and give a right to compensation.

Whilst, during the time necessary for the loading and the discharge, account may and must be taken of the freight, this is no more the case for demurrage which derives from posterior events. It is beyond any doubt that demurrage must be stipulated in the contract, either because the right must have its origin in the law or in the nature of the relations between parties or because we may not aggravate the position of the bearers of bills-of-lading to order, the latter being very numerous in the present practice of maritime trade; for, it is quite evident that the merchant who acquires a floating cargo or who became bearer of the documents for other reasons did not mean to undertake any liability for damages which are not for same and which he had not to forcade.

The juridical character of demurrage may not be confounded with the price of the transport : the freight. It must also not form an additionnal freight :

a) because freight is the remuneration of a normal transport and an additionnal freight would therefore only serve to complete that principal freight if there was any shortage. The result is that demurrage does not belong within the normal compass of the transports. Only for the laydays it could be said, at best, that they are an accessory of the freight and that they are based on the latter ;

b) because if an additionnal freight was paid as a demurrage there would be less reason to respect the obligations as to loading and discharging ;

c) because the principal object of modern maritime commerce is to save time; the considerable amounts of money invested in ships cannot remain improductive during a long time; and this would be the unavoidable consequence if the liability for delay should be reduced almost to nothing. Demurrage can therefore only represent an indemnity for damage suffered and not an accessory of freight.

If, in view of possible difficulties the delay necessary for the loading and the discharge was protracted this could not have as a consequence that the amount due as demurrage would represent a conventionnal penalty which should be considered as an accessory of the principal clauses, because the clause supposes a special agreement in the contract inserted in order to engage the parties to fulfill their liabilities and which exonerates the Master of the burden of proof whether the object be the payment of a sum of money or a prestation of another kind.

This being put as a principle, the result is that claims having their origin in demurrage are not guaranteed by a lien as would be the case if they were considered as an additional freight or an accessory of same. But as an independent claim it may be enforced by an ordinary judicial action on the securities affecting the effects carried.

It is true that a Bill-of-lading to order may be endorsed to a straw-man and in such case, as there is no lien — as soon as the goods have been withdrawn — the shipowner would remain without the normal guarantees for the payment of his claim deriving from demurrage. But it is to be remarked that shipowners have the faculty to free themselves in virtue of the clause « at master's diligence »; in this way he would avoid all losses as he would remain the sole master to effect the discharge and to pre-

vent in this way the money invested in the ship to remain improductive.

The above mentioned problems are very important, especially the third one, on which special attention should be called.

Quid if demurrage is caused by lack of room in the warehouses of the custom house where goods should have to be deposited?

Quid if demurrage is caused by the act of the Master or by the act of the stevedores?

Quid if demurrage is caused by the unloaders who might be united in trust or conclude unions for the manipulation and storing and for the use of the necessary material, so that the protracted hiring of such material may give raise to demurrage.

The shipowners who act immediately after the fact which caused the damage are diligent to ascertain the loss and reduce it as much as possible; when some time elapses, it becomes, of course more difficult to prove the exact nature of the facts under discussion.

A fortiori this argument becomes much more important if we consider that in the international relations the ship-masters have other things to do than to think of protests, actions and surveys.

c) In case of demurrage, private interests may by at stake; therefore there is no reason why the claim for demurrage should be subordonated to any protest, as is the case for matters of collision. In short, the party who thinks himself injured may take his measures from the beginning, but if he does not at once, he may do so later — on; both charterer and lessor shall be in the same conditions to defend themselves. So, in our opinion there is no serious argument on account of which an immediate protest should be required. It is true that according to the

old classic law the protest was necessary in order to have the regular demurrage refunded ; but it is true also that the delay did not give to the ships any right to an indemnity, whilst at present moneys invested in ships, the more they run the greater will be the profit whilst if the ship remains inactive this means several millions leaving no interests. If we consider the present character of maritime commerce and the fact that in our economic organisation all efforts tend towards this sole aim : to save time ; that even if there is no protest the facts and damages resulting therefrom are not the less certain, — one may conclude that a written protest is useless. It shall be sufficient to fix a relatively short delay within which the claim for demurrage must be introduced.

Finally if we add to this that, in case a written protest is required, non compliance with this formality would involve the decay of the rights, it seems to us that it is much better to strike this provision out of our laws (1).

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(1) A decision of the Court of Appeal of Brussels of June 13th 1900, (s/s Fastet) requires a protest ; Italian decisions of the Court of Genoa decide in the opposite direction in all cases where the number of demurrage days is exactly determined. Appeal Genoa : Cicellis v Laberies, May 10, 1880. Same Court : Carridj v Firm Piccaluga, July Ist 1886. Eco di Giurisprudenza Commerciale IV, 189, 244. This theory is also confirmed by another decision of the same Court. Firm Carlo Raggie v Racburn & Veut, February 20, 1901 (Temi, Genoa, III, Page 367) which decided that no protest is necessary to have the delay of demurrage running save in the case where there is any doubt as to that delay. All these decisions are but an application of the principle expressed in article 1233 of the civil code : « dies interpellat pro homine ». According to art. 517 of German code, demurrage runs ; but if there is no agreement on this subject between charterer and lessor the latter shall advise the former when the demurrage begins running.

Written protest. Decay and prescription of the claim.

From the social point of view there must be a delay fixed within which the rights conferred by the law may be legally enforced; as well as the law confers a protection it must at the same time establish the limit thereof No rights can last for ever as to the respect of the institutions of man, and the actual value of law is limited by time also, but all these remarks acquire a much greater importance when referring to maritime commerce where the itensity of the industry and the numerous contracts require various and short prescriptions in order not to give to easily occasion for litigations which are a serious inpedidement to the development of commerce.

Prescription depends on the term fixed for the introduction of an action. If this delay has elapsed, there is no more any regress ; the decay has this in common with prescription that there also time influences on the rights but decay does not transform the nature of the right itself whilst prescription substracts the action from the regular exercise of the law. The decay attains the action but not the right itself,as some have thought in opposition with the majority of writers.But one thing is certain: that as regards demurrage it is not necessary, for the introduction of the action, to protest in writing because as well the form of the claim (that means the document addressed to the authorities) as that of the claim itself must not be prescribed or come under decay.

Why so ?

In the international relations forms of procedure are generally not observed because they are not known and this point is of considerable importance. If one considers that

it is impossible for a ship to have, at each port of call, representatives, agents and correspondents; even the institution of consulates to which one might have recourse is not such that it may give actual assistance to those wanting help and counsel.

Indeed the motives of decay of actions which extinguish such rights as are subordonated to forms of procedure are generally odious to the public; the latter does not always understand the requirements of the traffic.

ARGENTINE REPUBLIC

ARGENTINE ASSOCIATION OF MARITIME LAW (1).

Buenos-Aires, August 31st 1907

Following the invitation of the International Maritime Committee, requisting us to examine the draft-treaties on « Limitation of Shipowners' Liability » and on « Maritime Mortgages and Liens on Ships », as well as the Questionnaire relating to « Conflicts of law as to Freight », the Argentine Association of Maritime Law beg to offer the following remarks :

I

Limitation of Shipowners' Liability.

With regard to this draft-treaty, the Argentine Association have to make two remarks :

In the first place, they propose to adopt the following as a final paragraph to article 2 :

« When a ship is sailed by a time-charterer, the liability » of the owner shall continue in existence in the form and » to the extent as provided ».

In making this proposition, our object is to confirm expressly the liability of the shipowner in such cases where the ship is sailed by a managing owner; in fact,

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(1) This report reached us a few days after the Venice Conference.

although this liability is admitted by some writers, as de Valroger, Desjardins, Cresp and Vidari, other writers, such as Pereyra Forgas de Sampio Pimentel, in Portugal, La Serna and Reus in Spain, and Obarrirri in the Argentine Republic, and the Court of Cassation of France, in their decisions of 11th Juine 1845 (Dall.) and of 18th August 1858 (Dall.) are of opinion that those parties who contract with a charterer or a time-charterer lose thereby ipto facto their right ot regrèss against the owner of the Vessel.

We further propose to strike out, or eventually to modify, paragraph 3 of article 3, as far as it includes among the accessories of the ship the amounts due to the shipowner under the form of indemnities for *assistance or salvage,* without any distinction being made as to whether those indemnities were earned after the facts which gave raise to the liability, and the indemnities earned previously, with relation, always, to the last voyage.

The reason of our remark is that, as the indemnities due for assistance or salvage are not included, any more than navigation premiums and subventions, as accessories of the ship in the effects of abandonment, in contracts of maritime insurance — there is no reason whatever to make an exception on this rule when we have to regulate the abandonment which the shipowner may effect to free himself from liability incurred by reason of the acts of the captain or crew.

By excluding the assistance or salvage-indemnities from the accessories of ship or freight, we merely follow the doctrine taught by Lyon-Caen, vol. 6, n° 1381, page 383; Laurin sur Cresp, IV, page 191. Note Droz, page 361 and follow. and Lewis, contradicting the opinion of Pipia and of some international committees.

Seeing that in the 3° of article 3, among the accessories

of the voyage, are not included the claims for demurrage, arisen at the port of loading, during the reception of the cargo, or at the port of dischage, during the delivery, for the good reasons which may be put forward, it seems to the Argentine Association that this exclusion must logically involve the exclusion of the indemnities for assistance or salvage.

II

Draft-treaty on Maritime Mortgages and Liens

We merely insist on the opinion already expressed by other national Associations (altough it has not yet been expressed in the draft-treaty) that it would be advisable to provide in a special article, the mode of registration required in order that the mortgage have an international validity.

Publicity is the basis of the situation of security indispensable to the existence and the extension of hypothecarian credit; if we merely trust the legislations of the country of origin, wich may often widely differ — and this the draft-treaty does — without even establishing a minimum of guarantees necessary in order that the publicity may be considered as sufficiently assured, we stand out to the danger that national legislations adopt a system of publicity which might prove unsufficient or inoperate and this would work much harm to hypothecarian credit, as it would in some measure allow the existence of mortgages more or less unknown to the other creditors.

Considering this question from the point of view of the necessity to settle the mode of publicity in the draft-treaty itself, our Association would prefer the inscription of the mortgage on the deed of property of the ship or on the

ship's papers, because these are documents which the captain must keep on board, according to all existing legislations. In this way it would be enough to require the production of these documents at the port where the ship is lying, to satisfy any creditor whether the ship is burdened or not with other mortgages which would have a priority on that he contemplates to grant and it would be no more necessary to require any extracts from the Registers or other documents at the port where the ship is registered.

III

Questionnaire on Freight.

As the solution of the different questions put in the questionnaire depends on the theory which is to be accepted on the principles in contention since the Conference of Sheffield 1865, our Association, (following therein the example given by other associations), wishing to avoid a repetition of classical arguments in favor of theories already known, merely give the conclusions which they consider most in accordance with such principles as form their conviction in such matters.

Summarizing their answers to questions 1 to 5, they are of opinion :

1. That freight is due when the ship is lost in the course of the voyage but the goods saved partly or wholly, as far as the owner of the goods has been benefitted in any way by the portion of the voyage effected.

The said freight should be calculated on the basis of the actual advantage which the effected portion of the voyage constitutes for the owner of the goods, and not merely on the proportion of the voyage effected.

2. Freight is due for goods sold in the course of the voyage for the necessaries of the ship or on behalf of the charterers in case of average by « vice propre » or by accident.

The freight due is the whole freight, and not a proportional freight in addition with a dead freight.

3. Freight should be due when the vessel is declared unseaworthy at the port of refuge and cannot complete the voyage but when the cargo, re-shipped by another vessel, reaches its destination.

The freight due to the ship which became unseaworthy must bear proportion : not only to the part of the voyage effected, with regard to the distance still to be covered, but also to the risks, expenses and efforts relating to the portion of the voyage effected (art. 631, German Code).

When the contract of affreightment is cancelled, the freight of the ship by which the goods were re-shipped, whether equal to, lower or higher than, the charter freight, remains for account of the consignee.

4. In the case where the charterer cancels the voyage before having commenced to supply the cargo, or when he loads only part of the goods booked, the indemnity due should be fixed by the law, instead of leaving it to common law as to damages to fix this indemnity; because according to common law, the freighter or shipowner would not only have to prove that the goods were not supplied, but he would also have to prove the amount of the loss — such proof being very difficult and expensive, and putting all contracting parties in a state of uncertainty which it is advisable to avoid.

5. Demurrage for delay during the loading or delivery of cargo must be considered as damages (German Code,

art. 574. Jacobs Vol. I, pages 334-335. – Contra : Lyon-Caen, Vol. V, nº 797).

The debition of demurrage should be subjected to a written protest. This protest may be made by correspondence.

It would be well to fix by law the basis for the calculation of demurrage (establishing therein a distinction between sailing vessels and steamers), at a given rate per ton, rather than to rely on the rules of common law as to damages.

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* *

We conclude these remarks by expressing the wish that at the next Conference at Venice, solutions may be adopted which expressing by practical results the work of the International Maritime Committee, constitute at the same time a step nearer to our ideal aim : unification of maritime law.

(s.) E. ZEBALLOS
President.

VENICE CONFERENCE

SEPTEMBER 1907

REPORT OF PROCEEDINGS

CONFÉRENCE DE VENISE

SEPTEMBRE 1907

COMPTE-RENDU

Séance d'ouverture

Inaugural Sitting

MERCREDI, 25 SEPTEMBRE 1908

WEDNESDAY, SEPTEMBER 25th 1908.

La séance est ouverte à 10 heures, dans la grande salle de la « Fenice », sous la présidence de Son Excellence M. Orlando, ministre de Grâce et de Justice.

The inaugural sitting is opened at 10 A. M. in the large room of the «Fenice», under the presidency of His Excellency M. Orlando, Minister of Grace and Justice.

M. ORLANDO, Ministre de Grâce et de Justice. — Vi accoglie, o signori, la città, che vide il più vigoroso e il più lungo florire dei commerci e dei traffici d'Italia e che, fra le più antiche, regolò con latina sapienza il diritto del mare; onde a me sembra che debba esserne l'ospitalità quasi augurale ai lavori di questo congresso, solenne veramente per l'autorità dei convenuti, rappresentanti degli Stati, rappresentanti della scienza, rappresentanti dell' industria. Rallietato, dunque dall'augurio, ch'emana dalle tradizioni e dalle glorie e dai fati del luogo, giunga a Voi tutti gradito il saluto, ch' io ho l'onore di porgervi, in nome del Governo d'Italia.

E questo saluto esprime, altresi, da parte mia, l'affermazione di un dovere. L'attività vostra, che si è svolta per un decennio con tenace perseveranza, ha già conseguito fecondi e benefici effetti, ed altri non meno importanti

scopi si propone. Voi potete, dunque, dire di avere mirabilmente adempiuto il compito vostro; un altro ora sottentra ad esso e viene ad integrarlo. Dinanzi al movimento d'idee, che voi avete determinato, non possono nè debbono rimanere inerti i Governi; ma è ufficio loro avvertire gli atteggiamenti nuovi, che nel loro sviluppo vanno assumendo gl' Istituti giuridici e l'esigenze, che i crescenti e più intensi rapporti creano, dominati come sono da un' idea unificatrice, che non tollera artificiali differenze di ordini legislativi. Il Governo italiano, in ogni occasione, accettò con premura l'invito che da voi gli veniva, e l' opera vostra accompagnò di costante e vigile simpatia, come è ora lieto di secondare gl' imminenti vostri lavori. Nè io credo di tradire alcun segreto di Stato, annunziandovi che, proprio in questi giorni, trattative han luogo tra i varii Governi per stabilire in una convenzione internazionale i principii già da voi deliberati in materia di abbordaggio e di salvataggio; ma, prima ancora di concludere tali accordi, si vuole attendere il risultato del presente congresso, perchè possa la convenzione comprendere anche i principii uniformi sulla responsabilità degli armatori, la qual questione ardua e grave, dopo un laborioso periodo di meditata preparazione, costituisce uno dei più notevòli temi delle vostre discussioni. Certo è assai raro, se non unico, il caso che dall' esito di un congresso si faccia dipendere un atto di sì alta importanza; e in ciò voi dovete trovare giusta ragione di orgoglio e, per l'opera vostra, la lode più ambita e più degna.

Io, o signori, mi sono per altro domandato se questa lotta per l'unificazione del diritto marittimo non sia, per la scienza e pei Governi, un dovere di riparazione di un danno, che scienza e governi hanno essi stessi prodotto. Se la natura ha posto il libero mare al di fuori della sovranità di Stati particolari, se il commercio marittimo si

svolge tra le nazioni, se internazionale è tutto l'ordirsi d'interessi economici del viaggio marittimo, sicchè, assai spesso, una è la nazionalità della nave e dell'equipaggio; altra quella del porto in cui si trova, altra quella dei passeggeri, altra quella dei varii caricatori, altra quella degli assicuratori (intreccio, che poi, per ognuna di queste categorie puó moltiplicarsi all'infinito), è ovvio desumerne che unica debba essere la legge regolatrice dei rapporti, che intorno al viaggio si formano. Questo riconobbe quel popolo, che più d'ogni altro avrebbe potuto affermare orgogliosamente dovere il proprio diritto ritenersi come universale; e, nel famoso frammento 9 Dig., de lege Rhod., il giureconsulto ricorda come ad Eudemone, che per un suo litigio marittimo si rivolgeva all'imperatore Antonino, questi rispondesse : « *Ego orbis terrarum dominus sum lex autem maris* ». Non, dunque, i varii e discordi comandi di uno Stato e dell'altro imperino in contrasto sull'uniforme immensa distesa delle acque, ma abbia la sua vera e libera e universale legge, il mare !

Perció io dicevo che il lavorio di unificazione è un ritorno verso l'ordine naturale delle cose, artificialmente turbato, e, nel tempo stesso, un'opera di riparazione. Di riparazione, affermo, poichè se l'unificazione legislativa dei codici — opera di scienza e di Governi — trovó dinanzi a sè una consuetudine marittima presso che constante e se tale uniformità venne in seguito compromessa, a cagionare questo regresso non potè non contribuire, diciamolo francamente, il fatto stesso delle codificazioni pur cosi immensamente benefico sotto tanti altri aspetti.

Ed è notevole che proprio nella lotta grandiosa, che si combattè a proposito della codificazione, fu, a favore di essa, addotta appunto la felice potenza di unificazione, che le è propria, contro la tendenza particolarista della consuetudine, per la quale, da luogo a luogo, mutano il

costume e il diritto, detèrminando conflitti continui ed aspri. Senza volere riaprire il dibattito, ormai chiuso dalla parola ultima dei fatti, certo a me pare che non del tutto esatta sia l'opinione che la consuetudine importi di necessità sminuzzamento o frazionamento del diritto ; ma, piu flessibile nei suoi adattamenti, allo stato naturale delle cose, se in non pochi casi divide, in altri ha dimostrato una potenza unificatrice, là dove, invece, l'azione dei codici ha prodotto l'effetto opposto. E il diritto marittimo lumeggia meravigliosamente questa antitesi. Proprio quando l'idea dell'unità mondiale del diritto aveva per sè forze anche superiori a quelle, che il sentimento della solidarietà internazionale ha potuto creare nei tempi nostri, — le due grandi forze unitarie del diritto romano e del diritto canonico — il diritto marittimo comincia ad affermarsi, invece, nelle consuetudini con tendenze particolari e locali. Nelle repubbliche nostre gloriose, mentre già fioriscono rigogliosi i commerci, e Amalfi e Pisa e Genova e Venezia irradiano numerose le loro galee a occidente e ad oriente, verso terre di cristiani e terre d'infedeli, gli usi marittimi sono con lenta elaborazione dichiarati negli statuti delle corporazioni o del comune. Ed ogni *Constitutum*, ogni *Capitulare*, ogni *Breve* determina un proprio diritto, nel quale influenze estranee non appaiono, anzi quasi si direbbe che ogni città ne sia studiosamente guardinga. Era un effetto della gelosia tradizionale, o non piuttosto della maniera stessa, onde si esercitò la primitiva forma di commercio marittimo, quando la natura dei traffici e l'insicurezza delle communicazioni, esposte ad ogni genere di piraterie, concentrava nella nave e in coloro ch' essa portava, tutti gl'interessi del viaggio ? Non é qui luogo per tali indagini ; certo è che, ripetiamo, sembra dapprima che le consuetudini marittime si affermino con figure proprie e particolari, da

cittè a città ; certo è d'altra parte, che in maniera lenta, ma ininterrotta ed irresistibile, il lavorio dell'unificazione si compie, con magnifico contributo mondiale, di guisa che proprio in quel secolo XVIII, alla fine del quale doveva iniziarsi il grande movimento verso le codificazioni, poteva il giureconsulto affermare l'esistenza di una consuetudine universale marittima : *Universalis cousuetudo in materiis maritimis communiter apud omnes provincias recepta.*

Per quali vie tale mirabile risultato spontaneo siasi conseguito, e per quali altre siasi in seguito perduto, è bene tener sempre presente, non a scopo di pura erudizione, ma per non dimenticare gli ammaestramenti dei fatti. Certo, la causa precipua, determinante l'unificazione, sta nella natura dei rapporti, e in quel carattere universale tutto proprio della navigazione marittima, che varietà di contingenze storiche ed economiche può parzialmente e transitoriamente turbare, non però sostanzialmente trasformare. Ma il modo concreto, onde la naturale tendenza potè affermarsi in istituzioni uniformi e costanti, fu sopratutto la intelligente difesa degli interessi economici, la quale, se nei tempi moderni di discussione e di pubblicità, trova la sua forma in associazioni, in comitati, in conferenze, in congressi, potè in altri tempi affermarsi coll' organizzazione spontanea degli interessi medesimi. Fu nelle convenzioni, stipulate al di sopra o al di fuori delle particolari sovranità, che si manifestò l'opera legislativa dei mercanti e degli industriali del mare; e fu principalmente nella creazione della polizza di assicurazione, cui tanto debbonno il commercio e il diritto marittimo, che l'aflrancazione dei limiti artificiali delle leggi e dei costumi particolari potè avverarsi. L'assicurazione rispecchiò nella polizza, opera convenzionale, il carattere cosmopolita della navigazione, cosmopolita essendo necessariamente l'ipotesi della industria delle assicurazioni marittime, cosi

in rapporto alla determinazione del calcolo delle probabilità, onde si forma il corrispettivo, come in rapporto alla massima estensione possibile dei rischi assunti, come in rapporto alla ripartizione del singolo sinistro sopra un largo numero di riassicuratori, come finalmente in rapporto agli interventi di assistenza e di difesa che l'assicuratore è chiamato a prestare in tutti i mari, dove un sinistro può essere avvenuto.

Se tanto potè la libera e spontanea manifestazione del bisogno economico, servita dall' arma poderosa degli uniformi accordi contrattuali, dovremmo avere ragione di bene sperare oggi, che la spontaneità del movimento trova riscontro e conforto nella riflessione, l'organizzazione necessaria ed istintiva in quella volontaria e cosciente. Ma non dimentichiamo che il mezzo per vincere è sempre quello : non perdere mai i contatti con la realtà, non vagheggiare « grandi principii » ma trovare eque forme di componimenti tra concreti interessi in lotta. E voi, infatti, o signori — e sta qui il segreto dei vostri successi — avete ben compreso che l'ideale di una completa codificazione del diritte internazionale marittimo — radioso ideale e tale da suscitare impeti di ammirazione e di entusiasmo — può solo raggiungersi al modo stesso e con la stessa lentezza, onde il microscopico infusorio è persino arrivato a formare vasti continenti; voi non proclamate principii, i quali agevolmente possono raccogliere nella teoria concensi facili ed unanimi, per dimostrarsi inefficaci e vani all' urto rude dei contrasti economici e sociali, ma sul campo della realtà, dove intense fremono le opere e dove veramente si concentrano le lotte d'interessi, voi colà ponete coraggiosamente, ad una ad una, le questioni più vitali, cercando, come avete fatto per anni a proposito delle responsabilità dell' armatore, la formola di più giusta transazione tra le opposte, poderose tendenze.

Cosi l'opera vostra si svolge; e balza spontaneo dal tema stesso dei vostri studi il paragone che al mare si ispira, al mare, prima fonte e perenne di ogni forma di vita. Così voi ben potete sentirvi indipendenti da ogni autorità sulla « gleba del mare » che mai non conobbe « servi », e dove l' immensità dello spazio sembra, non che consentire eccitare l' ebbrezza di una liberta sconfinata; ma non per questo vorrete mai perdere di vista la guida del piccolo ago fedele, nè vi verranno meno il coraggio e la prudenza che pure occorrono per superare la violenza delle procelle, per evitare le insidie degli scogli, i pericoli degli urti, le deviazioni delle correnti. Conforta bensi il considerare che i tempi volgono ora propizii alla vostra impresa, favorita dalla cooperazione di due forze, che solo all' osservatore superficiale sembrano in conflitto, da un lato l'intelligente egoismo dell' interesse economico, dall' altro quel sentimento di solidarietà sociale, che sempre più acuto pervade le genti umane. Son queste due forze che, per vie diverse, ma con identica efficienza ultima, intendono a sopire diffidenze e a comporre ostili rivalità tra le nazioni, spingendole a una comunanza di materiali interessi e di intellettuali conquiste, inducendo, ed eventualmente costringendo, i governanti a secondare questa fervida aspirazione verso una più armoniosa legge della vita dei popoli, verso una pace operosa e feconda.

E pace è la parola, che si legge sul libro aperto tra le branche del leone aligero di San Marco; accoglietela come l' augurio più fausto dei vostri lavori, in guisa che più gagliarda e più intensa si espanda l'umana attività sulle vie del mare, regolata da una norma suprema, che sia espressione concorde del sentimento di libertà e di giustizia di tutti i popoli.

(Traduction)

Nous sommes reçus, Messieurs par la ville qui a vu la floraison la plus riche et la plus durable du commerce et du trafic de l'Italie et qui, depuis les temps les plus reculés, règle le droit de la mer avec une sagesse toute latine. Son hospitalité est de bon augure pour les travaux de cette conférence, qui a un caractère vraiment solennel à raison de l'autorité s'attachant à ses membres, représentants des Etats,représentants de la science,représentants de l'industrie. Heureux du présage que je puise dans les traditions, dans les gloires et dans les destinées de cette cité, je vous adresse à tous la bienvenue au nom du Gouvernement italien.

Et ce salut contient aussi, de ma part, l'affirmation d'un devoir. Vos travaux, poursuivis depuis dix ans avec une persévérante tenacité ont déja produit des résultats féconds et des effets heureux, et des projets non moins importants se préparent. Vous pouvez donc dire que vous avez admirablement accompli votre tâche ; à présent une autre tâche vient s'y ajouter et la complèter. En présence du mouvement d'idées que vous avez créé, les Gouvernements ne peuvent rester inactifs ; il est au contraire de leur devoir d'observer les tendances nouvelles dont les travaux juridiques portent la trace et dont les besoins vont croissant, et sont dominés par une idée d'unification qui ne peut plus tolérer des différences artificielles dans le domaine législatif. Le Gouvernement italien, en toutes occasions, a accepté avec empressement de se rendre à vos invitations ; il a suivi vos efforts avec une sympathie constante et sincère, comme il est heureux, aujourd'hui de seconder vos doctes travaux. Je ne pense pas trahir un secret d'Etat en disant qu'en ce moment même des pourparlers sont engagés entre les divers Gouvernements en vue d'adopter, en une convention internationale, les principes que vous avez déjà arrêtés en matière d'abordage et de sauvetage ; mais, avant de conclure pareil accord, ils veulent attendre les résultats de la présente conférence, afin que le traité puisse comprendre également des principes uniformes sur la responsabilité des armateurs — cette question importante et ardue qui a fait l'objet d'une période laborieuse d'études préparatoires, et qui constitue une des bases les plus importantes pour vos discussions. C'est certainement un fait rare, sinon unique, que de l'issue d'un congrès puisse dépendre un acte gouvernemental d'une si haute importance ; en cela même vous pouvez trouver une juste raison de fierté et, pour votre œuvre, l'éloge le plus significatif et le plus mérité.

Quant à moi, Messieurs, je me suis d'autre part demandé si cette

lutte pour l'Unification du droit maritime n'est pas, pour la science et pour les Gouvernements, une occasion de réparer le mal que la science et les gouvernements eux-mèmes ont causé. Si la nature a placé la mer libre en dehors de la souveraineté des divers Etats, si le commerce maritime se développe entre les nations, si l'ensemble des intérêts économiques engagés dans le voyage maritime est essentiellement international, de sorte que très souvent, le navire et son équipage appartiennent à une nation ; le port où il se trouve à une autre ; à une autre encore les passagers, à d'autres aussi les divers chargeurs, à d'autres enfin les assureurs (et pour chacune de ces catégories, l'enchevêtrement des intérets peut se multiplier à l'infini) il est superflu de dire que c'est une loi unique qui doit règler les rapports qui se forment autour du voyage. C'est ce que reconnut ce peuple qui plus qu'aucun autre avait pu affirmer avec orgueil que son propre droit devait rester la loi universelle ; et dans le fameux fragment 9 Diz. Lex Rhodia de Jactu, le jurisconsulte romain rapporte qu'Eudemone s'étant adressé pour un de ses litiges maritimes, à l'empereur Antonin, celui-ci répondit : *Ego orbis terrarum dominus sum lex autem maris.* Ce n'étaient donc pas les prescriptions diverses et discordantes d'un Etat en contradiction avec le droit d'un autre empire ; non, l'immense et uniforme étendue des eaux avait dès lors sa loi propre, libre et universelle !

C'est pourquoi je disais que l'œuvre de l'unification est un retour vers l'ordre naturel des choses artificiellement dérangé, et en même temps, une œuvre de réparation. Je dis, de réparation, parce que si l'œuvre législative de la codification — œuvre de la science et des Gouvernements — trouva devant elle une coutume maritime presque constante, et si une pareille uniformité a été compromise ensuite, on ne peut expliquer ce recul — il faut le dire franchement, — que par le fait même de la codification, bien que celle-ci ait produit sous tant d'autres aspects d'immenses bienfaits.

Et il est curieux de remarquer ici que dans la lutte grandiose qui a eu lieu à propos de la codification, et qui est close aujourd'hui, l'un des arguments en faveur de cette codification a été précisément sa tendance vers l'unification qui lui est propre, en opposition avec la tendance particulariste de la coutume, qui fait que l'usage et le droit varient de ville à ville, donnant ainsi naissance à de continuels et âpres conflits. Sans vouloir resusciter ce débat, désormais clos, il me semble qu'il n'est guère exact de dire que la coutume entraîne nécessairement le fractionnement du droit ; plus flexible dans ses adaptations à l'état

naturel des choses, il est vrai qu'elle divise dans bien des cas, mais dans d'autres elle a fait montre d'une grande puissance d'unification là où l'action des codes a produit l'effet contraire. Et le droit maritime met ce contraste en lumière d'une façon frappante !

Alors que l'idée de l'unification mondiale du droit avait par ellemême une force supérieure à celle que le sentiment de la solidarité internationale a pu créer à notre époque — les deux grandes forces unitaires du droit romain et du droit canonique, — le droit maritime au contraire commença à s'affirmer dans des coutumes avec des tendances particulières.

Dans nos glorieuses républiques, alors qu'elles florissaient déjà, orgeuilleuses et opulentes, et qu'Amalfi et Pise, et Gênes et Venise envoyaient, nombreuses, leurs galères à l'occident et à l'Orient, vers des terres chrétiennes et vers les rivages payens, les usages maritimes se sont lentement introduits dans les statuts des corporations et des communes. Et tout *Constitutum*, tout *Capitulare*, tout *Breve* édicte un droit propre sur lequel les influences étrangères ne laissaient aucune empreinte ; au contraire on aurait presque pu dire que chaque cité avait soigneusement gardé ses portes contre pareille intrusion. Etait-ce là un effet de la jalousie traditionnelle ou était-ce plutôt une conséquence de la façon même dont se faisait le commerce maritime dans sa forme primitive, lorsque la nature du trafic et l'incertitude des communications l'exposait à toutes espèces de pirateries, concentrant dans le navire et dans ce qu'il portait, tous les intérets du voyage ? Ce n'est pas ici le moment de chercher la réponse à pareille question ; ce qui est certain, je le répète c'est qu'il semble à première vue que les coutumes maritimes sont nées avec leur caractère propre et spécial de ville à ville ; il est certain d'autre part que lentement mais d'une façon continuelle et irrésistible, l'œuvre d'unification s'accomplit, grâce à des concours venus de toutes parts, de telle façon que précisément dans ce XVIII siècle vers la fin duquel devait s'organiser ce prodigieux mouvement de codification, le jurisconsulte pouvait affirmer l'existence d'une coutume maritime universelle : *Universalis consuetudo in materiis maritimis communiter apud omnes provincias recepta.*

Par quelles voies ce résultat s'est spontanément produit et par quelles circonstances il s'est perdu dans la suite, voilà ce qu'il est bon de ne pas perdre de vue, non pas à titre de pure documentation, mais pour ne pas oublier la grande leçon des choses.

Certes la cause initiale, déterminante de l'unification, se trouve dans la nature même des faits et dans ce caractére universel qui est

le signe caractéristique de la navigation maritime, que des influences historiques et économiques peuvent affecter partiellement et temporairement mais non transformer substantiellement. Mais la cause principale a été avant tout la défense intelligente des intérêts économiques qui, si elle se traduit en nos temps modernes de discussion et de publicité, par la formation d'associations, de comités de conférences et de congrès, se retrouve en d'autres périodes dans le groupement spontané des intérêts identiques. C'était dans les conventions conclues conformément ou en dehors des souverainetés particulières que se manifesta l'œuvre législative des négociants et des industriels de la mer ; ce fut spécialement dans la création de la police d'assurance — à laquelle le commerce et le droit maritime doivent tant — que l'on peut retrouver la suppression des limites artificielles établies par les lois et les coutumes. L'assurance reflète dans la police, création de convention, le caractère cosmopolite de la navigation, la notion de l'assurance maritime étant nécessairement cosmopolite, aussi bien par rapport au calcul des probabilités d'où s'obtient l'équivalent, la prime, comme à raison de la plus grande extension possible des risques assumés, comme aussi à raison de la répartition d'un seul sinistre entre un grand nombre de réassureurs, comme enfin à raison de l'assistance et de la défense que l'assureur est appelé à fournir dans toutes les mers où un sinistre peut se produire.

Si la manifestation libre et spontanée des nécessités economiques, aidée des accords contractuels uniformes, peut déjà tant accomplir, nous devons avoir de bonnes raisons d'espérer qu'aujourd'hui que ce mouvement spontané est confirmé et appuyé par la réflexion, l'organisation volontaire et consciente. Mais noublions pas que le moyen de vaincre est toujours celui-ci : Ne jamais perdre le contact avec la réalité, ne pas poursuivre aveuglement de « *grands principes* » mais tâcher au contraire de trouver une formule transactionnelle pour les divers intértês engagés. Et en effet vous, Messieurs — et c'est là le secret de vos succès — vous avez bien compris que l'idéal d'une codification complète du droit international maritime — un idéal tellement radieux qu'il doit provoquer un élan d'admiration et d'enthousiasme — que cet idéal ne peut être atteint que par les mèmes moyens et avec la même lenteur avec laquelle l'infusoire microscopique est parvenue à former de vastes continents ; vous ne proclamez pas des principes qui peuvent facilement obtenir en théorie l'adhésion unanime, mais qui se révèlent absolument vains au choc rude des contrastes économiques et sociaux ; mais sur le champ

de la réalité où règne l'activité fébrile et où véritablement se concentrent les luttes d'intérêts, vous vous placez résolument, et vous entamez, une à une, les questions d'importance vitale, en cherchant — comme vous l'avez fait pendant des années pour la responsabilité des propriétaires de navire, — la plus équitable formule transactionnelle capable de concilier les tendances en conflit.

C'est ainsi que votre œuvre se développe ; vous avez choisi comme base de vos travaux cette comparaison qui s'inspire de la mer, — de la mer la source première et perpétuelle de toute forme de vie. C'est pourquoi vous pouvez vous sentir indépendants de toute autorité sur le « domaine de la mer » qui n'a jamais connu d'esclaves et où l'immensité de l'espace semble non seulement permettre mais encourager l'ivresse d'une liberté illimitée ; mais que cela ne vous fasse jamais perdre de vue la petite aiguille fidèle de la boussole ; c'est elle qui vous aidera à vaincre la violence de la tempête, à éviter les récifs, les dangers de collision, les courants contraires. Que ce soit une consolation pour vous de penser que le moment est propice pour la réussite de votre œuvre, favorisée comme elle l'est par la coopération de deux forces que seul l'observateur superficiel peut croire en conflit : d'une part l'égoïsme intelligent des intérêts économiques ; d'autre part ce sentiment de solidarité sociale qui se manifesta de plus en plus parmi les hommes.

Ce sont là deux forces qui, par des voies différentes, mais avec un résultat final identique, concourent à apaiser les défiances et à réconcilier les rivalités entre les nations, les réunissant dans un effort commun vers le bien-être matériel et les conquêtes intellectuelles, et obligeant les pouvoirs à seconder cette aspiration fervente vers une plus harmonieuse loi de vie des peuples, vers une paix active et féconde.

La paix, c'est la parole que l'on lit sur le livre ouvert entre les griffes du lion ailé de St Marc ; accueillez cette parole comme l'augure la plus favorable pour vos travaux afin que l'activité humaine s'étende toujours plus vigoureuse et plus intense, sur les routes de la mer; sous les auspices d'une règle suprême qui soit l'expression unanime du sentiment de liberté et de justice de tous les peuples.

M. LE COMTE DE GRIMANI, Maire de Venise. — Non è mio compito dire dello scopo altamente civile per cui si raccolgono oggi, in Venezia con S. E. il Ministro di Grazia

e Giustizia tanti e così illustri stranieri ed italiani, valentissimi cultori delle scienze giuridiche.

A me basta affermare che ove l'opera vostra, Ill.mi Signori, sia come è da augurarsi coronata di successo, la causa della civiltà e dell' umanità avrà motivo a registrare un nuovo trionfo. Tale sarà appunto l'unificazione del diritto marittimo, che è la meta costante delle vostre aspirazioni.

Più di tutto a me preme porgere a S. E. l'on. Ministro, a voi, illustri Signori, il cordiale saluto di Venezia, lieta ed orgogliosa di darvi ospitalità, e di sapere che nel suo nome e sotto il suo auspicio verranno trattate e risolte questioni di così alto ed universale interesse.

Ma io sono anche interprete di una viva e sincera gratitudine; coll'aver prescelto Venezia a sede della Conferenza, voi le avete attestato una simpatia che la onora e ne avete insieme riconosciuto l'importanza di città marittima.

E degna di questo onore e di questo apprezzamento è Venezia per ragioni storiche anzitutto; il diritto marittimo fu si può dire fin dai primordi una delle condizioni essenziali della sua esistenza. Costretta a vivere di commercio e di industrie, essa doveva trovare nella tutela dei propri interessi nel mondo uno dei potenti fattori della sua ricchezza e del suo benessere.

Certo essa non puo ora offrire specialmente agli illustri stranieri qui convenuti lo spettacolo meraviglioso dei grandi porti in cui si svolge il commercio internazionale e dove i traffici del mondo intero trovano immensi edifici e smisurate banchine, e quanto occorre per assicurare continuità e prontezza alle più svariate operazioni.

Pure Venezia, coi suoi tre milioni di tonnellate all' anno di merci e coi trenta milioni circa di cui arricchisce ogni anno il pubblico erario, sta a provare che ha saputo

raggiungere un posto onorevole fra i porti italiani, e che assieme a quelli di Genova, di Napoli e di altre città, concorre a dimostrare che gli interessi del mare sono ormâi uno dei fattori della prosperità italiana.

Sia lode a voi, Ill.mi Signori, per lo scopo che qui vi raduna : l'opera vostra è nobile manifestazione di quei sentimenti di concordia e di unione, che sono la garanzia più sicura per la umana solidarietà.

L'opera che siete per iniziare darà anche questa volta risultati fecondi; essi serviranno a rendere più facile la vita dei popoli e rialzeranno ancora il livello morale, moltiplicando pel bene di tutti gli inestimabili benefici della civiltà e del progresso.

Ed io auguro che l'Italia possa degnamente contribuire alla nobile causa e possa, come ebbe a dire l'on. Marghieri, il benemerito Presidente dell' Associazione Italiana di diritto marittimo « convincer tutti che essa ha la coscienza dell'avvenire che può spettarle ».

(*Traduction*)

Je n'ai pas à vous parler du but hautement louable pour lequel se réunissent aujourd'hui à Venise, avec S. E. le Ministre de Grâce et de Justice, tant d'illustres étrangers et Italiens, vaillants adeptes des sciences juridiques.

Il me suffit d'affirmer, Messieurs, que si votre œuvre est couronnée de succès, comme nous le prévoyons, la cause de l'équité et de l'humanité aura à enregistrer un nouveau triomphe. Telle se caractérise bien l'unification du droit maritime, objet constant de vos aspirations.

Avant tout je suis heureux de présenter à S.E. l'honorable Ministre et à vous, Messieurs, le cordial salut de Venise, heureuse et fière de vous donner l'hospitalité et de savoir qu'en son nom et sous ses auspices seront traitées et résolues des questions d'un intérêt aussi grave et universel.

Mais je suis également l'interprète d'une gratitude vive et sincère; en choisissant Venise comme siége de cette Conférence, en lui témoignant une sympathie dont elle s'honore, n'avez-vous pas en même temps reconnu son importance comme ville maritime?

Et Venise est digne de cet honneur et de cette appréciation pour des raisons historiques avant tout : de tout temps le droit maritime a été, si je puis m'exprimer ainsi, une des conditions essentielles de son existence. Contrainte de vivre de commerce et d'industrie, elle devait trouver dans la protection de ses propres intérêts dans le monde un des puissants facteurs de sa richesse et de son bien-être.

Certes Venise ne peut en ce moment offrir, spécialement aux illustres étrangers réunis ici, le spectacle merveilleux des grands ports dans lesquels se développe le commerce international et où le trafic du monde entier trouve d'immenses édifices et d'immenses quais et où on trouve tout ce qu'il faut pour assurer la régularité et la promptitude dans les opérations les plus variées.

Cependant Venise, avec ses trois millions de tonnes de marchandises par an et par les trente millions environ dont elle enrichit annuellement le trésor public prouve qu'elle a pu se conquérir une situation honorable parmi les ports italiens et qu'avec ceux de Gênes, de Naples et d'autres encore, elle contribue à démontrer que les intérêts de la mer constituent toujours un des facteurs de la prospérité italienne.

Nous vous devons de la gratitude Messieurs, pour le but élevé que vous poursuivez ici : votre œuvre est une noble manifestation de ces sentiments de concorde et d'union qui sont la garantie la plus sûre de la solidarité humaine.

L'œuvre que vous avez commencée donnera encore cette fois des résultats féconds : ceux-ci tendront à rendre plus facile la vie des peuples et à relever encore le niveau moral, en multipliant au profit de tous les inestimables bienfaits de la civilisation et du progrès.

Et je crois que l'Italie peut contribuer dignement à cette noble cause et qu'elle peut, comme le dit l'honorable M. Marghieri, le digne président de l'Association italienne de droit maritime « convaincre tout le monde qu'elle a conscience de l'avenir qu'elle peut espérer ».

M. LE PROF. ALBERTO MARGHIERI. (Naples), Président de l'Association Italienne du Droit Maritime.

Monsieur le Ministre,
Monsieur le Maire, Messieurs,

Lorsqu'il y a deux ans, à Liverpool, l'on nous fit l'honneur de proclamer l'Italie comme lieu de réunion de cette

conférence, l'Association italienne de Droit Maritime indiqua à son tour la ville de Venise.

Peut-être à Gênes nous aurions pu vous montrer un mouvement maritime plus avancé et un port qui par son importance, tout en ne pouvant pas encore rivaliser avec les colosses du Nord, est prêt à occuper, avec celui de Marseille, la première place de la Méditerrannée. De son côté, Naples, à travers son renouvellement économique et industriel, aurait cherché à garder à vos yeux la renommée de Syrène que lui attribue la bienveillante courtoisie de ses visiteurs.

Mais comment ne pas reconnaître, pour l'objet qui nous réunit, la primauté de Venise ?

Cette ville fantastique et féerique, si particulièrement chère aux Italiens, pour sa gloire et pour ses douleurs, ne plane pas seulement sur nos républiques maritimes. La voix qui de Malamocco et de Rialto retentit jusqu'aux bords lointains de l'Orient, ne fut pas seulement une voix de conquête politique et commerciale. Le jour où, plus tard, vos ancêtres, poussés par leur esprit d'entreprise et par les voies nouvelles qui s'ouvraient au commerce des peuples, se répandirent jusqu'aux derniers coins de la Méditerranée, partout, le long du chemin sillonné par la griffe du lion victorieux, il leur fut donné de retrouver le souvenir de textes d'une législation maritime qui, en remontant aux siècles du Moyen-Age, eut un essor des plus remarquables. Les Statuts du XIII siècle, et parmi tous, le *Capitulare Navium* du 13 septembre 1228 sont certainement une des sources les plus appréciables du droit maritime.

En invoquant, Messieurs, ces époques de l'ancienne grandeur commerciale de vos patries et de la nôtre, on est porté à relever le caractére tout à fait spécial qui, pendant des siècles, a distingué les lois de la mer. Ce caractère est

la presque uniformité des règles à travers les lois qui se suivaient et qui successivement trouvaient leur application dans les ports d'Europe et de l'Orient. Le droit maritime perdit depuis, dans plusieurs pays, son autonomie d'origine et le mouvemont législatif ne réussit pas à se soustraire aux influences locales qui en modifièrent ou en détruisirent l'uniformité. Cela a duré quelque temps ; mais c'était contraire à la nature même des choses. Le retour vers l'uniformité s'imposait et il faut que les Etats, tout en ayant chacun sa propre loi, en arrivent à l'unification des principes et des règles par rapport à une matière essentiellement universelle et cosmopolite. Et puisque notre œuvre à nous vise précisément à ce but, il sied fort bien que notre réunion en Italie ait lieu dans cette ville dont les souvenirs glorieux nous reconduisent à une situation législative, qui, à certains points de vue, est si conforme à nos aspirations.

En me rendant l'interprète de l'Association italienne de Droit Maritime que j'ai l'honneur de représenter, je vous prie, Monsieur le Maire, d'agréer nos remercîments les plus vifs pour votre charmant accueil.

En souhaitant la bienvenue en Italie aux délégués des Gouvernements et des Associations des autres pays, nous sommes heureux et fiers de pouvoir le faire à Venise ; et c'est à vous, Monsieur le Maire, qu'en revient le premier mérite.

Nous vous en remercions encore une fois.

Et votre présence, Monsieur le Ministre de la Justice, a pour la réussite finale du but que nous poursuivons, la plus haute valeur. Comme juriste éminent et comme membre du Gouvernement italien, vous donnez à nos travaux, par votre intervention, le meilleur encouragement et vous en assurez le succès.

Veuillez accepter, avec les autres Ministres qui nous ont fait l'honneur de se faire représenter à cette solennité,

les sentiments de notre plus vive et profonde reconnaissance.

Si l'intérêt des Gouvernements allait nous manquer, nos efforts n'aboutiraient à rien. Heureusement, il n'en est pas ainsi. La présence de si hauts personnages, celle des illustres délégués d'un si grand nombre de Gouvernements en est la preuve la plus frappante.

Les deux conférences diplomatiques qui se suivirent à Bruxelles en 1905, montrent que nous sommes définitivement parvenus à une phase pratique et concrète.

L'initiative du groupe de juristes, d'armateurs et d'assureurs de la Belgique eut ainsi le plus grand succès qu'on aurait pu attendre. Ces vaillants et infatigables pionniers, par la force de leur volonté et par leur rare esprit de persévérance, ont su réunir autour d'eux un mouvement qui se rattache à tous les Etats de l'Europe, à l'Amérique du Nord, à la République Argentine et qui, dès les premiers jours, attira la sympathie du Japon.

Un homme d'Etat éminent, Monsieur Auguste Beernaert, est l'âme de cette initiative. L'histoire de la législation gardera son nom parmi ceux qui ont le plus efficacement contribué à l'œuvre que nous poursuivons; et je crois qu'il est de mon strict devoir de rappeler avec lui, ses savants coadjuteurs, Monsieur Charles Le Jeune et Monsieur Louis Franck. En dix ans, depuis 1897, de Bruxelles à Anvers, à Londres, à Paris, à Hamhourg, à Amsterdam, à Liverpool, que de chemin n'avons-nous pas parcouru! Nous sommes devenus toujours plus nombreux; nos conférences ont redoublé de portée; nous avons formulé des avant-projets sur des points fort intéressants du droit maritime, tels que l'Abordage, l'Assistance, le Sauvetage et la Compétence en matière d'abordage. Le Gouvernement de la Belgique a l'inappréciable mérite d'avoir appelé l'attention des autres Etats sur nos travaux et je suis sûr

de répondre aux sentiments de vous tous, Messieurs, en lui témoignant notre reconnaissance tout à fait spéciale.

Les sujets qui formèrent la matière de nos études à Amsterdam et à Liverpool trouveront leur solution définitive ici à Venise.

La question de la limitation de la responsabilité des propriétaires de navires est parvenue à sa conclusion. Nos confrères anglais ont droit à toute notre gratitude, car si les systèmes du Continent auraient pu bien facilement trouver des points d'entente, pour en aboutir à l'uniformité des règles, nos efforts n'auraient réussi qu'à moitié, sans le concours des juristes et des armateurs anglais, qui n'ont pas refusé d'accorder leur système national avec les autres, pour arriver à une entente générale.

La commission, qui fut nommée par vous à Liverpool, se réunit à Paris il y a un an et prépara le questionnaire qui est devant vous, pour le cours de vos travaux.

De la part de toutes les Associations, des rapports fort remarquables ont été présentés et vous en avez reçu le texte par le Bureau d'Anvers. Tout porte à croire que la contribution de notre conférence sera des plus fertiles et des plus concrètes.

Notre tâche, Messieurs, n'est certainement pas prête à s'accomplir. L'objet de nos études est des plus larges et des plus compliqués. Les difficultés ne manquent pas et parfois elles ont presque l'air de nous barrer le chemin. Mais nous sommes tous profondément convaincus que rien ne pourrait nous éloigner du but auquel nous visons, ni affaiblir notre élan.

Ce qui nous pousse et nous soutient, c'est bien la persuasion de l'utilité de notre travail au point de vue de l'intérêt commercial des peuples et, j'ose le dire, de la civilisation humaine elle-même. En effet, l'unification des lois ne se rapporte pas seulement au fond commun des

actes et des rapports des hommes entre eux; mais elle montre aussi et de la manière la plus directe et la plus complète, que le Droit touche à son but. Et l'évolution du droit, c'est la marche des peuples vers le bien-être moral et matériel.

Rien de plus noble et de plus séduisant pour ceux qui ont voué leur intelligence et leur activité à cette œuvre de progrès.

M. CHARLES LE JEUNE, (Anvers) Vice-Président du Comité Maritime International.

Monsieur le Ministre, Monsieur le Maire, Monsieur le Président de la Chambre de Commerce, Monsieur le Président de l'Association Italienne de Droit Maritime,

Messieurs,

J'adresse à la noble nation qui nous reçoit, et à la ville de Venise, le témoignage de la vive gratitude du Comité Maritime International pour l'accueil qui lui est fait. Je n'ai qu'un seul regret, que vous partagerez tous, c'est d'avoir à constater ici l'absence de notre éminent président, M. le Ministre Beernaert, retenu loin de nous malgré son désir de mettre une fois de plus sa grande autorité au service de notre cause et je ne puis mieux faire que de vous citer les termes même de la lettre qu'il m'a écrite pour vous donner la mesure des sentiments qui l'animent. Les voici :

« Déjà, je pense, vous êtes à Venise, la belle Venise!
» Et ce n'est pas sans un serrement de cœur que je songe
» que je devais être du voyage. Vous savez combien
» j'aime l'Italie, et je me faisais une fête de prendre part
» au Congrès dont je tiens que l'on peut beaucoup attendre.
» Mais la vie politique a ses devoirs, et cette fois ils me
» condamnent impérieusement à rester au pays.

» Je vous pric de bien vouloir dire à nos amis pourquoi » je manque à leur appel et le profond regret que j'en ai. » Exprimez-leur aussi tous les vœux que je forme pour le » succès de nos communs efforts, et ce succès, j'y compte » fermement parce que notre œuvre le mérite; n'est-elle » pas toute de progrès, de paix et de fraternelle entente? »

En m'adressant à vous, alors que la parole éloquente de notre Président eut retenti parmi nous avec tant d'éclat, je sens toute mon insuffisance à remplir la tâche qui m'est échue en partage et je vous prie instamment de m'accorder une indulgence dont j'ai le plus grand besoin.

Le Gouvernement de S. M. le Roi d'Italie, en voulant bien s'intéresser au succès de nos travaux et en daignant nous donner les marques de sa haute bienveillance, rehausse cette conférence d'un grand lustre. Son Excellence Monsieur le Ministre de Grâce et de Justice a déroulé devant vous en un langage magnifique, le tableau du droit maritime à travers les âges. En présidant à l'ouverture de nos débats et en exprimant en termes si élevés l'approbation qu'il accorde à notre œuvre, il nous remplit des sentiments de la plus vive reconnaissance. L'Italie est le pays par excellence du droit maritime. Ses rivages baignés par la mer voyaient dès les temps les plus reculés la navigation servir d'instrument au développement de son puissant commerce; c'est ici que prirent naissance les célèbres et anciennes coutumes qui servirent de modèle aux lois maritimes des autres peuples. Dans les temps présents, au milieu de l'émulation qui pousse les nations à se disputer le domaine de la mer, l'Italie ne cesse d'affirmer son importance croissante parmi elles et se montre fidèle aux traditions qui ont favorisé l'essor de son génie.

Venise, qui dans les siècles passés donna le signal de ce grand mouvement, Venise, qui arma d'innombrables flottes, Venise, la Reine de l'Adriatique qu'on ne peut contempler

sans éblouissement, Venise, nous reçoit et nous fête. L'affluence de nos membres, accourus de toutes parts, démontre, mieux qu'aucune parole, tout le prix qu'ils attachent à cette hospitalité. En leur nom, je remercie chaleureusement Monsieur le Maire de Venise, de la faveur insigne qui nous est faite et je salue la ville merveilleuse où viennent s'entremêler en une symphonie exquise les choses de la mer et les beautés incomparables que l'art et la poésie ont réunies sous son ciel lumineux.

Je n'ai pas épuisé encore, Messieurs, l'énumération de nos dettes.

La Chambre de commerce de Venise, les grandes Sociétés de Navigation se sont associées à la réussite de cette conférence et ont tenu à nous manifester le plus précieux intérêt, et l'Association italienne de Droit Maritime, une des affiliées de la première heure de notre Comité Maritime International, poussant jusqu'aux plus extrêmes limites le témoignage de sa sympathie, a fait de véritables prodiges en composant pour cette réception un programme plein de séductions. A chacune d'elles, et à leurs honorés présidents, MM. Coen, Crespi et Marghieri, j'offre l'expression de notre profonde et respectueuse reconnaissance.

La conférence qui nous rassemble marque une date : elle coïncide avec le dixième anniversaire de la fondation du Comité Maritime International. En nous réunissant il y a dix ans à Bruxelles dans la petite salle des conférences du Ministère de l'Industrie et du Travail, nous étions quelques hommes de bonne volonté. Six nations étaient représentées parmi nous : l'Allemagne, l'Angleterre, la Belgique, la France, l'Italie et les Pays-Bas. Une seule association nationale, l'Association belge, anticipant sur le succès espéré, avait vu le jour. Ailleurs, les groupements régionaux n'étaient qu'en voie de formation. Telle était l'équipe du début, et elle pouvait paraître bien réduite pour entamer

le grave problème d'unification des lois maritimes des divers pays, véritable chaos dont la confusion n'avait fait qu'augmenter et qui en certains cas — tel l'abordage — touchait à l'absurde. Chose étrange : alors que toutes les nations, pour leurs relations d'outre-mer, eussent dû envisager avant tout leurs intérêts internationaux, elles n'avaient songé qu'à faire des lois maritimes étroitement conçues dans un esprit national, confectionnées souvent par des hommes étrangers aux réalités de la navigation et qui ne paraissaient guère se douter qu'en cette matière une loi nationale est d'un bien faible prix, vu que le navire, passant de pays en pays, subit l'application des lois multiples et disparates auxquelles il est obligé de se soumettre.

Ce n'est pas que l'unité des lois n'eut depuis longtemps été signalée comme une réforme utile et que dès 1828 elle n'eut trouvé un adepte convaincu dans le célèbre Pardessus qui, dans son Commentaire des anciennes lois maritimes, a si bien dit que produites en tous pays par des besoins semblables, elles doivent être partout les mêmes, parce que leur prévoyance hospitalière doit offrir les mêmes garanties aux étrangers qu'aux nationaux. Mais les temps n'étaient pas venus et sa parole tomba dans le vide.

Aussi lorsque nous avons entrepris la tâche de contribuer à la diffusion de ces idées, ne nous en sommes-nous pas dissimulé les difficultés. Vaincre les préjugés, secouer l'indifférence, lever une véritable armée de partisans dans les divers pays, intéresser les hommes de la science et les hommes du fait, créer des associations et finalement obtenir des gouvernements qu'ils reconnaissent les véritables intérêts, si longtemps méconnus, de leur marine et de leur commerce, — tel est le grand problème à la solution duquel nous nous sommes appliqués. Pour atteindre au but, nous avons rompu avec les méthodes anciennes, nous

avons renoncé dans nos réunions, aux joutes oratoires, aux débats brillants mais sans lendemain; nous avons mis au service de nos idées une organisation permanente, un échange de lumières qui remontant des associations nationales de chaque pays, au foyer central, venait par des procédés de sélection, illuminer de clarté les opinions émises et aboutir à la solution la plus propre à concilier les intérêts de tous. Nous ne nous sommes pas bornés à appeler à nous les hommes que leurs études ou leurs professions préparent aux spéculations théoriques; nous avons réclamé largement le concours des hommes de la vie pratique, des laborieux dirigeants du grand commerce, de l'armement, des assurances; ensemble ils se sont réunis dans chaque pays en des associations nationales qu'il a fallu faire éclore, et c'est ainsi qu'à l'aide de ces institutions bien conçues et bien composées, justement écoutées des gouvernements, il s'est formé un vaste courant d'idées et une opinion internationale reflétant non pas un droit abstrait et étranger aux faits, mais la formule même des besoins internationaux de la vie maritime de notre temps.

Tel est, Messieurs, le champ d'action dans lequel nous avons évolué ; tel est le rapide tableau de nos activités. Après dix années il convient de mesurer le chemin parcouru et de voir si le résultat méritait la somme considérable d'efforts dépensée avec tant de désintéressement par des hommes accourus de leur initiative privée, de tous les pays, pour régénérer le droit maritime.

Je pense que vous trouverez, comme moi, que la démonstration est faite. A l'heure actuelle, indépendamment de l'Angleterre où une organisation spéciale que nous espérons voir se fortifier encore, nous a valu des concours d'une valeur inestimable, nous comptons 15 associations nationales organisées, dont trois hors d'Europe.

Permettez-moi de saluer parmi ces groupements qui

sont la base et la force de notre œuvre, qui agissent en pleine indépendance et dont le concours est précieux, les deux dernières venues, la Société Russe de Droit Maritime et l'Association Argentine qui, d'un bout à l'autre du monde vous apportent la preuve de l'appréciation de vos labeurs. J'y joins le vœu que les efforts des honorables promoteurs d'une Association Espagnole soient bientôt couronnés de succès et qu'à la prochaine conférence, nous puissions compter en elle une alliée de plus.

Nous avons tenu sept conférences, successivement à Bruxelles, Anvers, Londres, Paris, Hambourg, Amsterdam, Liverpool et celle qui nous réunit aujoud'hui est la huitième. Des commissions importantes, chargées d'élaborer sous forme d'avant-projets de convention internationale les résolutions arrêtées dans les conférences plénières, se sont réunies à Londres, Anvers, Paris.

Un ensemble de textes codifiés, soit sous une forme définitive, soit à titre préparatoire, est sorti de ces travaux. Ils comprennent la législation sur l'abordage, sur l'assistance et le sauvetage, sur la responsabilité des propriétaires de navires, enfin, sur les hypothèques et priviléges maritimes. Il faut y ajouter encore les travaux sur la compétence en matière d'abordage qui ont donné lieu à des discussions du plus grand intérêt, et dans cette session même, vous verrez apparaître pour la première fois, précédée des plus savants rapports, l'étude des conflits de lois en matière de fret.

Une sanction éclatante est venue nous récompenser. Au mois de février 1905, sur la proposition du Gouvernement belge, une conférence diplomatique se réunissait à Bruxelles et, prenant pour point de départ de ses travaux les avant-projets sur l'abordage, l'assistance et le sauvetage préparés par notre association, se donnait la mission d'en faire l'objet d'une convention internationale.

A cette première réunion prenaient part treize puissances; l'Allemagne, l'Angleterre, l'Autriche et la Hongrie étaient parmi celles qui s'étaient abstenues. Une seconde réunion eut lieu en octobre de la même année. La vérité était en marche, les doutes disparaissaient, les hésitations fléchissaient. L'Allemagne, l'Angleterre, l'Autriche et la Hongrie et d'autres puissances encore répondaient à l'invitation du Gouvernement et cette fois, vingt-et-une puissances participèrent à la conférence, d'où sortirent des résolutions que nous pouvons, avec un légitime orgueil, considérer comme entièrement inspirées par notre œuvre et qui, espérons-le, seront suivies d'une ratification définitive.

Dans cet exposé, simple récapitulation, je dois me borner, mais j'espère que notre vaillant secrétaire général, M. Louis Franck, qui a déployé au cours de cette période décennale et pendant la conférence diplomatique à laquelle il a pris part comme l'un des délégués du Gouvernement belge, tous les talents, la compétence et l'énergie que vous connaissez, voudra bien vous faire le résumé des travaux de la conférence diplomatique, où il a brillé d'un si vif éclat.

Et à ce sujet qu'il me soit permis de constater combien nous sommes heureux de l'attention flatteuse et croissante que les gouvernements accordent à nos délibérations et de nous féliciter tout particulièrement qu'il ait plu spontanément à certains d'entre eux de se faire représenter à cette conférence, qui est honorée du bienveillant patronage de Son Excellence Monsieur le Ministre des Postes & Communications du Royaume d'Italie et où je salue non seulement Son Excellence Monsieur le Ministre de Grâce et de Justice du Royaume d'Italie, mais MM. les délégues des gouvernements suivants :

Pour *la Belgique* : Son Excellence Mr Capelle, Ministre Plénipotentiaire & Envoyé extraordinaire.
Mr. de Sadeleer, Membre & Ancien Président de la Chambre des Représentants.
Mr. Houbotte, Directeur honoraire au Ministère des Affaires Etrangères.

Pour *l'Espagne* : M. Velez y Coralès, Consul général.

Pour *la Hongrie* : Mr. François de Nagy, Ancien Secrétaire d'Etat, Député.

Pour *l'Italie* : M. le Prof. Dr Francesco Berlingieri, de Gênes.
M. le Prof. Pietro Cogliolo, de Gênes.
M. le Prof. C. F. Gabba, de Pise, Sénateur.
M. le Prof. Giovanni Pacinotti, de Ferrare.
M. le Prof. Ercole Vidari, de Pavie, Sénateur.
M. le Prof. Cesare Vivante, de Rome.

Pour *les Pays-Bas* : Mr. B. C. J. Loder, Avocat, Rotterdam.

Pour *la République Argentine* : M. le Dr Léopoldo Melo, M. le Dr Juan Carlos Cruz, M. le Dr Honorio Pueyrredon, professeurs à l'Université de Buenos-Aires.

Je termine, Messieurs, et j'ai à rendre un dernier hommage à toutes les personnalités distinguées qui se sont à l'envi employées à nous préparer cette réception superbe. Je ne pourrai entreprendre, de crainte d'oublis, d'énumérer toutes les hautes notabilités vénitiennes, toutes les activités généreuses qui nous ont gratifiés de leurs témoignages et de leur précieux concours. Qu'elles veuillent bien accepter

l'expression de notre gratitude la plus entière, que je renouvelle au nom du Comité Maritime International.

SIR WILLIAM PICKFORD (London).

M. le Ministre et Messieurs, I regret that I have not sufficient facility in the Italian or French languages to speak to you ; and I request your indulgence while I say a few words in English to express, as M. Le Jeune has expressed, our gratitude and our appreciation for the kindness and hospitality extended to us by the Kingdom of Italy and by the City of Venice. After the eloquent speeches that we have heard, I shall not occupy your time in trying to convince you that our aim and end here is for good : that I think has been absolutely shewn to you by what has been already said. The unity of Maritime Law is a thing which, if accomplished, will be of great benefit to the World. It is impossible that on all subjects all Nations should have the same laws. Differences of position, differences of population, differences in national customs which have grown up with the growth of the various nations make it impossible. But in matters of Maritime Law, in matters concerning the Sea, where the ships of every nation go to the ports of every nation, it is possible, and it ought to be done ; and in order to get it done these Conferences have been held for now something like ten years. They have met at many places, as you have been told, and I need not go over the names of those towns and cities again; and now we have come to Venice! And could we come to a more appropriate place ? It is not only perhaps the most beautiful and interesting City that one could find, it is not only now a sea-port of great commercial importance, but it has a history of Maritime and Commercial prosperity that goes back to the time when many of our present great seaports

in England were mere fishing villages. Could we come to a better place than this? I think not. And I hope and think that these Conferences will attain the end of the unity of Maritime Law. That unity cannot, of course, be obtained at once; but whether these Conferences attain it or do not, they have, as it seems to me, another very valuable result: they bring together Merchants, Underwriters, Shipowners, and Lawyers of different countries. They bring together different men of different countries exercising different capacities and positions, and the result of bringing these men together is, I have no doubt whatever (for I have seen something of it myself) to teach them to appreciate, to respect, and to like one another. That, if there were no other result at all, would be a most valuable result of these Conferences.

Gentlemen, I have little more to say. As I said, these Conferences have taken place in several towns and cities in Europe; wherever they have been held the members have been received with the greatest kindness by the Authorities of the different cities; and in no city and in no country have they been more kindly received than in Italy and in Venice; and the good feeling, which, as I say, is induced by bringing delegates of different Countries together, will be promoted by the reception offered to us on this occasion by the Kingdom of Italy and by the City of Venice — by the grace, and the kindness, and the generosity, with which it has been offered.

Venice and Italy are names known to us all and beloved by us all. We shall look back, those of us who are here to-day and will be here for the next few days, with still greater affection to Italy and to Venice because of the reception which you have given us, and because, as I say, of the grace and kindness and generosity with which it has been offered. May I, Messieurs, again tender to you

— to the Kingdom of Italy — to the City of Venice — and to all those who have so kindly co-operated in receiving us — our most heartfelt thanks.

(*Traduction*)

Je regrette de ne pas connaître suffisamment l'italien ou le français pour vous adresser la parole en ces langues et je vous prie de m'excuser si je vous parle en Anglais pour vous exprimer, comme M. Le Jeune l'a déjà fait, toute notre gratitude pour l'hospitalité qui nous est accordée par l'Italie et par la ville de Venise. Après les éloquents discours qui ont déjà été prononcés, je n'abuserai pas de votre temps en tâchant de vous convaincre de l'excellence de notre but ; je crois que cela a été absolument démontré par ce qui a déja été dit. L'uniformité du droit maritime, si elle est accomplie, constituera un avantage immense pour le monde entier. Il est évidemment impossible que toutes les nations aient les mêmes lois en toutes matières. Des différences de situation, de population, des différences de coutumes nationales qui se sont établies à mesure que les nations se formaient, s'y opposent. Mais là où il s'agit de droit maritime, là où il s'agit de la mer, où les navires de toutes les nationalités se rendent dans les ports de tous les pays, l'unification est possible et elle doit s'établir ; et c'est dans ce but que ces conférences ont été organisées depuis environ dix ans. Elles se sont tenues à divers endroits : je ne dois pas vous rappeler ici les noms de ces villes, mais nous voici à Venise !

Pouvions-nous trouver un lieu plus approprié ? Non seulement c'est peut-être la ville la plus belle et la plus intéressante qui soit, non seulement Venise est actuellement un port de mer d'une importance commerciale considérable, mais elle a une histoire de prospérité maritime et commerciale remontant à une période à laquelle la plupart de nos grands ports de mer anglais n'étaient que de simples villages de pêcheurs. Pouvions-nous nous réunir dans un endroit plus propice ? Je ne le pense pas. Et j'espère et je pense que ces conférences aboutiront au but proposé : l'unification du droit maritime. Certes, cette unité des législations ne peut être atteinte d'emblée ; mais que ces conférences y conduisent ou non, il me semble qu'elles ont en tout cas un autre résultat très précieux — c'est de mettre en contact des hommes des differents pays occupant des situations et des positions diverses, et le résultat de ces réunions est, j'en suis sûr (car je l'ai pu constater un peu moi-même), d'apprendre à ces hommes

de s'apprécier, de se respecter mutuellement. Ce résultat, à défaut même de tout autre, serait certainement très précieux.

J'ai peu de choses à ajouter. Comme je viens de le dire ces conférences se sont réunies dans plusieurs villes d'Europe ; partout, des membres ont été reçus avec la plus grande amabilité par les autorités de ces villes ; nulle part la réception n'a été plus aimable qu'en Italie et à Venise ; et les sentiments d'estime réciproque dont je parlais à l'instant ne peuvent que gagner à la réception qui nous est faite à cette occasion par le Royaume d'Italie et par la ville de Venise — surtout à l'amabilité et la générosité avec lesquelles cette hospitalité nous est offerte.

Venise et l'Italie, ce sont des noms que nous tous, nous connaissons et nous aimons. Ceux d'entre nous qui sont ici et qui y seront encore pour quelques jours, conserveront de l'Italie et de Venise un souvenir d'autant plus affectueux que ce souvenir s'associera avec cette brillante hospitalité offerte d'une façon aussi aimable et aussi généreuse.

Qu'il me soit permis, Messieurs, d'exprimer encore une fois nos remercîments les plus affectueux à vous, au Royaume d'Italie, à la ville de Venise, et à tous ceux qui nous ont préparé une si aimable réception.

M. le Comm. AGOSTINO CRESPI, Directeur de la « Navigazione Generale Italiana ».

J'ai l'honneur d'apporter à vous, Monsieur le Ministre, à vous, Monsieur le Maire, à vous, Monsieur le Président de la conférence, et à vous tous, Messieurs, les hommages de la Navigazione Generale Italiana et ceux des autres armateurs italiens, dont je suis certain d'interpréter la pensée, sans en avoir toutefois la représentation expresse.

Les armateurs n'ont certainement pas la prétention de participer à vos hautes discussions, mais ils les suivront avec le plus vif intérêt et vous voudrez bien leur permettre une déclaration et un souhait sincère.

Pour être efficace, le droit — nous l'apprenons de vous qui l'enseignez et le patronnez, — doit être juste : c'est-à-dire que tout en conservant ses bases économiques, il doit tendre toujours vers la protection des intérêts, en conci-

liant ceux qui sont en collision, sans sacrifier les uns en faveur des autres ; en un mot, le droit doit avoir toujours comme fonction principale, le développement de l'activité économique qu'il règle.

Là où le droit s'exerça sans aucune considération pour l'industrie, celle-ci commença à décliner.

N'est-ce pas un facteur important, capital de la grandeur maritime anglaise, que celui qui dépend de son droit et de la juste interprétation qu'en font ces cours-là ?

Pour revenir en arrière : qui pourra nier un rapport étroit de dépendance entre le développement maritime de Hambourg, Brême et Lubeck et le droit hanséatique ; entre le printemps maritime des républiques italiennes et l'ordonnance de Tarni, la Constitution de Gênes, le Consulat de la mer, la Constitution glorieuse de Florence sur les assurances ?

Or, vous savez bien que sauf quelques rares exceptions, une grande partie de la législation maritime en vigueur, se ressent encore d'une époque où le petit bateau quittait le port en ne se fiant qu'à la miséricorde des vents et d'un moment où la constitution capitaliste de l'entreprise maritime était fort différente de l'organisation actuelle comme matière et comme forme.

Vous voulez porter, Messieurs, un remède à cet état de choses ; vous voulez faire bien plus : vous voulez mettre fin à ce que Lord Alverstone dans la réunion de Liverpool, appelait une humiliation ; vous voulez que sur l'Océan, il n'y ait pas vingt législateurs différents.

Eh bien ! Ce sont précisément les armateurs qui souffrent de cette incertitude et de ces désaccords législatifs souvent encore aggravés par de fausses interprétations, par de nouvelles lois spéciales qui voudraient être démocratiques et qui, au contraire, deviennent anti-économiques et nuisibles à la vraie démocratie.

Qui donc, plus que nous, doit vous en être reconnaissant ? Qui donc, plus que nous, doit suivre vos travaux avec l'espérance et le souhait qu'ils deviennent florissants ?

Toutefois, il est certain que vos audacieuses intentions doivent se baser sur un fondement solide que nous pouvons vous offrir. Une étroite et ferme collaboration de la part des armateurs et des assureurs vous portera à des résultats décisifs.

Vous savez du reste que le droit maritime, si glorieux et qui fut une des principales raisons de la grandeur maritime de plusieurs peuples, naquit des habitudes et des usages marchands ; et ceux-ci ne provenaient-ils pas peut-être des conventions que les marchands de la mer établissaient entre eux et des jugements que les experts proféraient ?

C'est ainsi que les Règles hanséatiques, c'est ainsi que tant de statuts et que tant de Constitutions, plus que d'être des actes du pouvoir central, représentaient l'ensemble des règles élaborées dans la vie même du commerce et du trafic.

C'est pourquoi le peuple Pisan pouvait dire, comme le rappelle Pardessus « qu'il fallait longtemps consulter l'expérience avant de faire intervenir l'autorité publique ».

Et ce n'est pas par hasard que j'ai parlé des assureurs. Vous savez comment le commerce maritime doit à l'institution de l'assurance une grande partie de son développement et de son internationalité.

Ce n'est que lorsque l'assureur a dit aux commerçants hardis et courageux : « Allez, franchissez les mers, déployez votre activité et votre industrie, je me charge de vos risques » que d'après ce qu'on lit dans l'exposé des motifs du code de commerce français, « les quatre parties du monde se sont trouvées rapprochées ».

Mais l'assurance porta et porte toujours une transformation des rapports dans les sujets de l'entreprise mari-

time en transformant ainsi la conception de responsabilité et quelquefois même — nous pouvons le dire avec orgueil — en remédiant aux lacunes et aux périls de législations vieillies.

Vous comprenez donc bien, Messieurs, comment, de cette triple union entre juristes, assureurs et armateurs nous pensons que l'on peut attendre ce qui est pour vous un grand idéal et pour nous une véritable nécessité.

Et pendant que nous hâterons, avec tous les moyens à notre disposition, au moyen de conventions avec les autres armateurs, au moyen d'instituts, — dont le syndicat international pour la responsabilité civile des armateurs que nous avons fondé, est une preuve, — la réalisation de ce que beaucoup appellent un songe : l'unification du droit maritime, nous vous dirons comment se développe notre industrie, quelles entraves représentent pour sa marche certaines règles en vigueur, et quels en sont les nouveaux besoins. Nous vous démontrerons, Messieurs, la raison d'être de certains rapports juridiques entre armateurs et enrôlés qui, à certains démocrates, peuvent sembler en désaccord avec les temps et qu'il est nécessaire au contraire de rendre plus sûrs ; nous vous dirons encore quels sont les risques journaliers de la navigation, quelles peuvent être les conséquences de l'application des principes rigidement juridiques, pour l'armateur d'un de ces grands colosses marins, qui constituent pourtant l'orgueil de notre époque, et vous trouverez, — nous en sommes sûrs, — des règles sages et des formules pratiques.

Les assureurs vous diront aussi quels sont les inconvénients qui peuvent être évités pour diminuer les conséquences économiques d'évènements tragiques et vous saurez tenir compte de l'institution des assurances dans vos délibérations juridiques, surtout en ce qui concerne la responsabilité des propriétaires des navires.

Puisque cette limitation est un des principaux objets soumis à l'étude de cette réunion — eh bien, dans ce thème, il y a la vie même de notre industrie.

Dites, illustres délégués, que cet institut sur la responsabilité de l'armateur et propriétaire de navires doit être rappelé à son antique origine et à ses raisons économiques et observez bien que l'industrie maritime ne peut et ne doit pas être comparée à toute autre industrie terrestre, ni l'armateur à un commerçant quelconque. Dites-le dans cette belle et hospitalière Venise qui, aux temps de sa grandeur ne fut pas seulement avide de gloire et de commandement, mais qui eut aussi une part importante dans ce grand mouvement juridique qui apparut sur la Méditerranée avec le développement de nos républiques.

« Cum sit dignum dare omnem possibilem largitatem et beneficium mercaturæ maritimæ, ubi cum honestate fieri possit », — c'est ainsi que la ville des Doges commençait une de ses premières glorieuses ordonnances maritimes.

M. LE COMM. COEN, président de la Chambre de Commerce de Venise.

Signori,

Io vi porto il saluto affettuoso del commercio veneziano. — Voi siete venuti qui a continuare un'opera altamente civile iniziata e proseguita con successo da tanti anni e noi ve ne siamo grati. Voi avrete osservato con quanto interesse Venezia si prepari a seguire le vostre discussioni e la vostra opera. Sembra quasi alla nostra città di rivivere nella tradizione gloriosa della sua vita sul mare, nella sua tradizione di prima e grande legislatrice in cose marittime.

La vostra opera, precisa nei limiti e nelle finalità, ha la grande fortuna di non incontrare nè avversari nè oppositori, nè nella teoria, nè nella pratica. E' la stessa legge del

progresso che vuole che il diritto sotto tutte le sue forme vada semplificandosi e generalizzandosi e se questo è vero pel diritto in generale, lo è tanto più pel diritto commerciale e sopratutto marittimo.

Sul mare, che è stato posto dalla natura per servire di legame e di unione tra i popoli, dove tutto è cosmopolita, e le navi e i capitali che rappresentano o formano il carico e le assicurazioni, venti legislazioni diverse vi imperano, applicabili l'una o l'altra secondo il caso degli approdi.

Queste diversità esistenti nella legislazione marittima, e noi pratici lo sentiamo tutti i giorni, è la causa di continue incertezze, di continui inconvenienti.

Ma forse non siamo tanto lontani dalla meta che tutti intravediamo e che voi perseguite con tanto splendore di studi, con tanta tenacia di volere.

Un primo passo è stato fatto, e anche questo lo dobbiamo a voi, con l'adozione del codice universale in materia di abbordaggio e di salvataggio. Sappiamo che i vostri lavori sono presi a base delle conferenze diplomatiche per trattati e convenzioni tra Stati in materia di navigazione ; in fine, quando vediamo raccolti e animati dalla stessa convinzione uomini illustri del foro, della magistratura, del mondo degli affari, noi possiamo sperare che tutte queste influenze, messe a profitto di una causa cosi giusta, possano riuscire nell'alto compito.

Mi era proposto prima di chiudere mi fosse lecito ancora esprimere un augurio oggi che l'Italia sta studiando la riforma del Codice di commercio e della marina. Tale augurio era che il Governo volesse tener conto dei vostri studi e dei vostri voti e voglia così per primo iniziare praticamente l'opera di unificazione che noi tutti vagheggiamo. Ma le parole di S. E. il Ministro Orlando, testè udite, rispondono e confortano splendidamente.

Mi sia lecito in ultimo di rivolgere un saluto riverente a

S. E. il Ministro Orlando che qui così degnamente rappresenta il Governo, all'Illustre signor Le Jeune, presidente del Comitato Marittimo Internationale, all' Illustro prof. Marghieri, presidente del Comitato italiano e al prof. Ascoli, che assieme ad altri illustri, così nobilmente rappresentano in Italia la vostra grande idea e di ripeterlo a voi tutti che da lontani luoghi siete oggi quì convenuti.

(*Traduction*)

Messieurs. Je vous apporte le salut affectueux du commerce de Venise. — Vous êtes venus ici pour continuer une œuvre de civilisation, commencée et poursuivie avec succês depuis tant d'années et nous vous en sommes reconnaissants. Vous aurez vu avec quel intérêt Venise s'est préparée à suivre vos discussions et vos travaux. Il semble que notre cité revive dans la tradition glorieuse de sa vie sur mer, dans sa tradition de premier et grand législateur dans les choses maritimes.

Votre œuvre bien précise dans ses limites et dans son objet, a la bonne fortune de ne rencontrer ni adversaires, ni opposition, ni en théorie, ni dans la pratique. C'est la même loi du progrés qui veut que le droit, sous toutes ses formes aille en se simplifiant et en se généralisant et si cela est vrai du droit en général il l'est d'autant plus quand il s'agit du droit commercial, et surtout du droit maritime.

Sur l'océan, que la nature a fait pour servir de lien et de trait d'union entre les peuples, où tout est cosmopolite, et les navires, et les capitaux qu'ils représentent ou qui forment leur cargaison et les assurances, vingt législations différentes s'appliquent l'une aprés l'autre, selon le hasard des relâches. Cette diversité dans les législations maritimes — nous hommes de la pratique nous le sentons tous les jours — est la cause de continuelles incertitudes, d'inconvénients sans nombre.

Mais peut-être ne sommes nous pas loin du but que tous nous entrevoyons et que vous poursuivez avec tant de science dans vos études et avec tant de ténacité dans la volonté.

Un premier pas a été fait — et cela aussi, c'est à vous que nous le devons — par l'adoption d'un code universel de l'abordage et de l'assistance.

Nous savons que vos travaux servent de base à la conférence diplomatique pour les traités et conventions entre les Etats en matière

de navigation ; enfin, quand nous voyons réunis ici et animés de la même conviction, les personnalités illustres du barreau, de la magistrature, du monde des affaires, nous pouvons espérer que toutes ces influences mises au profit d'une cause aussi juste, finiront par nous mener au but grandiose poursuivi.

Avant de finir, je voulais exprimer encore un vœu, aujourd'hui que l'Italie s'occupe de la réforme du code de commerce et du code maritime. Ce vœu, c'est que le Gouvernement veuille tenir compte de vos études et de vos résolutions afin qu'il puisse ainsi, le premier, commencer dans la voie pratique l'œuvre de l'Unification que nous poursuivons tous ; mais les paroles que S. E. le Ministre Orlando a prononcées tout à l'heure y répondent complètement.

Qu'il me soit enfin permis d'adresser un respectueux hommage à S. E. le Ministre Orlando qui représente ici si dignement le Gouvernement, à l'illustre M. Le Jeune, président du Comité Maritime International, à l'illustre professeur Marghieri, président du Comité italien, et au professeur Ascoli qui avec tant d'autres représente si dignement en Italie votre grande idée, et de vous saluer tous, vous qui êtes venus de loin pour prendre part à cette réunion.

Monsieur LOUIS FRANCK. — J'ai simplement à faire ressortir, en quelques mots, quels sont les résultats que nous avons obtenus depuis notre dernière conférence. Si le Bureau Permanent a tenu à ce que ce petit exposé fût fait ici, la raison en est, Messieurs, que rien ne fait mieux ressortir le caractère pratique et raisonné de l'œuvre à laquelle vous vous dévouez comme nous.

Lorsque nous nous sommes réunis à Liverpool, un premier résultat important avait été obtenu : pour la première fois, dans une matière de droit privé pur, une conférence diplomatique s'était réunie. Treize pays y avaient été représentés et il n'est que juste de dire que parmi les premières réponses favorables que reçut le Gouvernement belge figure celle du pays qui nous donne aujourd'hui l'hospitalité.

A la seconde conférence diplomatique, des places qui étaient restées vides lors de la première session et qui

étaient importantes, étaient remplies, et elles l'étaient, Messieurs, à la suite de cette démarche qui avait été faite à Liverpool, où ceux qui se dévouent à cette œuvre avaient eu la joie de voir presque tout l'armement, presque tout le monde des assureurs, presque toutes les associations de banque et du haut commerce anglais, se prononcer d'une voix en faveur de notre œuvre de progrès commercial et de solidarité parmi les hommes.

Le Gouvernement anglais a écouté cette grande voix, et à la seconde session de la conférence diplomatique qui se réunit le 16 octobre 1905 à Bruxelles, la Grande-Bretagne était représentée ; elle l'était, — vous vous en souvenez — par notre éminent collègue Sir William Pickford et par mon ami M. Leslie Scott, devenu avec moi secrétaire général du Comité Maritime International.

L'Autriche et la Hongrie elles aussi étaient venues prendre leur place : Tous les Etats de l'Amérique du Sud s'étaient également joints à la conférence, de sorte, Messieurs, que 21 nations délibéraient ensemble sur le meilleur moyen de donner à la mer un droit uniforme.

Il s'agissait pour nous de savoir quel accueil serait fait par cette assemblée aux travaux de ce qui, malgré notre zèle et votre mérite, ne sont en somme que des réunions officieuses. Eh bien, je pense que ce sera pour nous tous un grand encouragement de constater que les principes sur lesquels unanimement la conférence diplomatique, dans ses deux sessions, vient de se mettre d'accord, correspondent dans tous leurs éléments essentiels à ceux que vous avez arrêtés dans vos divers congrès. Il n'a été apporté d'autres modifications que celles qui s'imposaient parce que les textes ont été précisés et les solutions mieux indiquées. Tout a été fait pour que le système élaboré dans les conférences internationales puisse s'incorporer sans changement dans les lois des divers pays.

Et si dans le code relatif à l'Assistance en mer, une modification plus importante a été faite, c'est au moins une réforme à laquelle nous pouvons nous rallier sans difficulté. Lors de nos délibérations, la France et l'Italie avaient proposé que dans tout sinistre maritime, l'assistance fût une obligation ; qu'elle dût être rendue même au navire coupable qui avait causé la collision, même aux navires étrangers, même — disait la formule — aux navires ennemis. Nous avions pensé que s'il fallait consacrer cette obligation c'était dans des limites prudentes, et non au delà, il convenait de ne demander que le strict nécessaire et de ne rendre l'assistance obligatoire que l'orsqu'il s'agissait de l'abordage. La conférence diplomatique a été plus large et elle a rendu général ce devoir de se secourir et de s'entr'aider.

Il me semble que c'est vraiment sous une belle étoile que naît un code qui inscrit dans le droit international un principe d'aussi noble humanité !

Mon rapport est terminé.

Laissez moi ajouter cependant que les Chancelleries ne sont pas si bien fermées que nous n'ayons réussi à savoir que les démarches faites pour connaître les sentiments des grands pays permettent d'espérer qu'avant longtemps, — peut-être après une troisième session — l'Océan aura, au moins sur ces deux matières, un droit uniforme.

Ce ne sera là, Messieurs, qu'une seule pierre que nous aurons apportée à l'œuvre juridique de demain, mais il en viendra d'autres. Nous tâcherons de construire petit à petit cette première chapelle du droit nouveau maritime, du droit commercial, industriel, civil, devenu identique chez tous les peuples de même civilisation.

Laissez moi formuler cet espoir que la chapelle deviendra église et puis cathédrale, et qu'en des âges à venir ce temple des lois mondiales unifiées abritera d'in-

nombrables croyants ayant foi dans les destinées pacifiques du monde afin que les peuples, voyent tout ce qu'ils ont en commun, tout ce qui les unit, perdent jusqu'à la notion de ce qui pourrait encore les diviser !

Monsieur Charles LE JEUNE (Anvers).

Excellence, Messieurs,

Je vous prie de vouloir bien, selon les habitudes de notre Conférence, demander à la réunion la désignation d'un président et en même temps de me permettre d'être l'interprète des vœux qui m'ont été exprimés de toutes parts en vous priant de déclarer que par acclamation, Monsieur Marghieri, Président de l'Association Italienne de Droit Maritime soit élu président de cette réunion. (*Approbation unanime*).

Monsieur ALB. MARGHIERI. — Je n'ai qu'un seul titre, Messieurs, pour accepter la charge honorifique que M. Le Jeune vient de proposer : c'est d'être le président de l'Association italienne de droit maritime, et c'est la tradition de nos conférences qui fait désigner le président de l'Association nationale comme président de la Conférence.

C'est donc un sentiment de devoir strict qui me pousse à accepter une charge qui certainement ne me reviendrait pas.

J'ai donc l'honneur, au nom de Sa Majesté le Roi, de déclarer ouverte la huitième conférence de droit maritime internationnal.

Je vous propose d'envoyer nos hommages aux augustes chefs de tous les Etats qui sont représentés parmi nous.

Je vous propose aussi d'envoyer un télégramme à Sa Majesté le Roi d'Italie, qui a tant à cœur tous les grands intérêts de la nation. (Approbation).

Je prie M. Bettochi de donner lecture des télégrammes arrivés.

Padova 25 setiembre.

Rispondendo alla gradita sua del 21 corrente respintami oggi da Roma. Saluto con vivo compiacimento la riunione della settima conferenza internazionale per la unificazione del diritto marittimo. Tutto cio que vale a perfezionare la tutela giuridica della navigazione e guarentigia ed impulso nell' estendersi e moltiplicarsi delle communicazioni. Il mare in tempi lontani elemente di divisione e di isolamento fra i popoli e divenuto grazie alla maravigliose vittorie della tecnica moderna alle ardite iniziative del commercio alla saggia opera dei governi la gran via delle nazioni elemento principalissimo di solidarieta internazionale.

Possano le discussioni di tanti illustri rappresentanti di nazioni amiche riuniti a Venezia ricca di antiche glorie marinare e che dal mare attende la sua rinnovata grandezza essere feconda di nuovi progressi del giure marittimo. Voglia on. Sig. presidente porgere alla Conferenza il mio deferente saluto e il mio augurio di splendido successo Scanzer ministro delle Poste e dei telegrafi.

(*Traduction*)

Padoue, 25 Septembre.

Répondant à votre honorée du 21 courant je suis revenu aujourd'hui de Rome.

Je salue avec un vif plaisir la réunion de la septième conférence internationale pour l'unification du droit maritime. Tout ce qui tend à perfectionner la protection juridique de la navigation est une garantie et un encouragement pour l'extension et la multiplication des communications. La mer, autrefois un élément de division et d'isolement des peuples est devenue aujourd'hui, grâce aux merveilleuses victoires de la technique moderne, grâce aux initiatives hardies du Commerce, aux sages travaux des Gouvernements, la grande route

des nations et l'élément principal de la solidarité internationale. Puissent les discussions de tant d'illustres représentants de nations amies réunies à Venise, cette ville, riche d'antique gloire maritime et qui attend de la mer la resurrection de sa grandeur, être fécondes en nouveaux progrès pour le droit maritime.

Veuillez, Monsieur le Président, transmettre à la Conférence mon salut cordial et mes vœux de plein succès.

(s) Scanzer,
Ministre des Postes et Télégraphes.

Le Bureau de la Conférence, sur la proposition de M. le Président, est composé comme suit :

BUREAU DE LA CONFÉRENCE.
OFFICERS OF THE CONFERENCE.

Vice-Présidents :

Italie : M. le professeur GASTONE ASCOLI.

Allemagne : M. FRIEDRICH RECK, président de la Chambre de commerce de Brême.

Autriche : Son Exc. Monsieur GERTSCHER, président de l'Association autrichienne et de la Cour d'appel de Trieste.

Belgique : Son Exc. M. CAPELLE, Envoyé extraordinaire et Ministre plénipotentaire, Bruxelles.

Danmark : M. A. HINDENBURG, président de l'Association danoise de Droit maritime, Copenhague.

Espagne : M. José Vélez y Corrales, Consul général, délégué du Gouvernement espagnol.

Etats-Unis d'Amérique : Hon. G. BRADFORD, juge du district de Delaware, E.-U.

France : M. F. C. AUTRAN, président de l'Association française de Droit Maritime, Marseille.

Grande-Bretagne : Sir WILLIAM PICKFORD, juge à la Haute Cour, Londres.

Hongrie : Son Exc. M. le Comte NAKO, gouverneur de Fiume.

Japon : M. WAKAMYA, Secrétaire au Ministère des Communications, délégué du Gouvernement japonais.

Norvège : M. le professeur PLATOU, président de l'Association norvégienne, Christiania.

Pays-Bas : Monsieur B. C. J. LODER, vice-président de l'Association néerlandaise, délégué du Gouvernement néerlandais, Rotterdam.

République Argentine : Dr JUAN C. BELGRANO, ancien Ministre, délégué du Gouvernement Argentin, Buenos-Ayres.

Russie : M. V. DE GREWS, Secrétaire général de la Société russe de Droit Maritime, St-Pétersbourg.

Suède : M. ELIEL LÖFGREN, secrétaire de l'Association suédoise de droit maritime, Stockholm.

SECRÉTAIRES GÉNÉRAUX :
GENERAL SECRETARIES :

Monsieur le Prof. BETTOCHI (Naples).
Monsieur LOUIS FRANCK (Anvers).
Monsieur LESLIE SCOTT (Londres).
Monsieur l'avocat SERENA (Venise).

Secrétaires-adjoints :

Monsieur Carlo BROSCH (Venise).
Monsieur Ruggiere Jesi (Venise).

La séance est levée. — Sitting adjourned.

SÉANCE DE L'APRÈS-MIDI.

AFTERNOON'S SITTING.

Monsieur le Prof. MARGHIERI, (*président*), ouvre la séance et aborde l'ordre du jour :

Avant projet de traité sur la Limitation de la Responsabilité des Propriétaires de navires.

Draft-treaty on Limitation of Shipowners Liability.

M. LE PRÉSIDENT. — L'article I est conçu comme suit :

Les droits et les responsabilités des parties intéressées seront réglés suivant les dispositions de la présente convention :

a) lorsque les navires en litige seront ressortissants aux Etats contractants ;

b) dans tous les cas où la loi nationale aura rendu applicables les dispositions de la présente convention.

The rights and liabilities of the parties interested shall be regulated according to the provisions of the present convention,

a) When the vessels concerned belong to the contracting States,

b) In every case in which the national law shall have applied the provisions of the present convention.

M. LOUIS FRANCK (Antwerp.) — The principle of this article is that, according to what has been stated during the deliberations of the Diplomatic Conference, there

should be a law passed in each Parliament — the first Article thereof being that the Draft-Treaty is approved, and the second Article being that the national law for cases where the treaty would be by itself inoperative will be « as follows » And then the principles of the Treaty will be repeated.

M. Nagy. — Je pense Messieurs, qu'il y aurait lieu de modifier cet article. Pour nous, c'est à dire pour la conférence, il est absolument superflu. Nous n'avons pas le droit de stipuler au sujet de l'application d'un traité que nous ne concluons pas. C'est pourquoi je propose de ne pas discuter cet article I qui n'a pas de mérite propre, qui est sans aucune valeur en principe, mais qui a seulement intérêt pour un traité éventuellement à conclure. Il fera peut-être l'objet d'un examen par la conférence diplomatique qui doit se réunir à Bruxelles. Dans ce cas, pareille stipulation pourra être mise en avant.

Mais pour le moment, je pense que nous ferions mieux de laisser à part cet article.

M. F. C. Autran. — Messieurs, comme j'avais l'honneur de présider la Commission qui s'est réunie à Paris pour rédiger l'avant-projet, vous ne serez pas surpris que je réponde au membre de la conférence qui demande la suppression de l'article I. Nous avons au contraire inséré cette disposition dans le texte, et cela après mûre réflexion, en ce sens que quand on prépare un projet de traité il est indispensable que l'on puisse présenter aux divers gouvernements un texte complet et définitif.

D'autre part, et à un second point de vue : nous avons été instruits par l'expérience des deux conférences diplomatiques de Bruxelles. La première question dont se sont

occupés les diplomates a été de savoir à qui et dans quelles conditions s'appliquera le traité.

Par conséquent, j'insiste très énergiquement sur le maintien de cet article I, parce que comme nous le disait très bien notre ami M. Franck, il s'agit de procéder par la voie diplomatique. Les diplomates sont les êtres moraux qui représentent les nations. Et ce sont par conséquent ces êtres moraux qui s'engagent les uns vis à vis des autres et en cas d'abordage entre navires ressortissants à ces Etats, il n'est pas douteux que la convention s'applique. Mais d'autre part, comme M. Franck l'a bien fait observer, il faut encore que les législations nationales soient modifiées toutes les fois que les litiges existeraient entre navires appartenant à des Etats signataires et des navires de nations qui n'auront pas signé le traité.

Il convient donc de stipuler très clairement, et j'insiste encore pour que l'on vote l'article I.

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I repeat in English what I have just said :

We brought this Article into the state in which you find it because it is in agreement with the traditions of the diplomacy of the States which are cantracting one with the other, and therefore it is perfectly necessary to put words in the preface which will render it enforceable. At the Diplomatic Conference in Brussels on the Salvage question it was considered necessary to explain most clearly the circumstances under which the Treaty would apply ; furthermore we are bringing before the Governments a sketch of the Treaty and therefore we must bring before the Governments a complete sketch in the form to which diplomats are accustomed, and consequently I think we must insist upon this first Article as it stands.

M. LE PRÉSIDENT. — Je conseille à M. Nagy de ne pas insister sur sa proposition.

M. NAGY. — Nous n'avons pas à faire des prescriptions de ce genre.

M. LOUIS FRANCK. — Je comprends parfaitement l'idée de M. Nagy. Mais en examinant le traité, la conférence diplomatique, si elle trouve que cette disposition ne convient pas, peut évidemment en faire ce qu'elle veut.

DR. CHARLES STUBBS. (London). — On behalf of the Maritime Law Committee I have to suggest that a note should be added to Article 1 in order that it may be understood that in many Countries legislation is required to render the Convention binding in Courts of Law, in as much as the Article is applicable in two alternatives, in one of which the vessels concerned belonged to the contracting States. In the case of Great Britain and other Countries having the same legislative procedure the Draft-Treaty, if agreed to by the Government and nothing more said, would not be applicable to vessels belonging to England.

(*Traduction orale par* M. LOUIS FRANCK).

M. le Dr. Stubbs a dit qu'au point de vue anglais, une certaine explication est nécessaire. L'article paraît dire que dans certains pays, le traité par lui-même pourrait avoir force de loi; mais tel n'est pas le cas en Angleterre.

SIR WILLIAM PICKFORD (London). — With regard to what has fallen from Mr. Stubbs I do not think there will be any trouble upon this question; because these Treaties if they are agreed to would have to be confirmed by Parliament, and only when so confirmed would they

become operative; so that, on the one hand, if the Treaty be not confirmed the question will never arise, and if, on the other hand, the English Legislature does confirm the Treaty the Government itself will take care that the necessary alterations are made in our laws.

(*Traduction orale par* M. LOUIS FRANCK).

Sir William Pickford a répondu que l'article 1 est bien clair à son avis. C'est un traité, et un traité est une convention. Par conséquent, en principe on ne doit y parler que des Etats contractants et des sujets de ces Etats.

Mais les Etats contractants peuvent s'engager entre eux à modifier leurs lois nationales dans une certaine mesure, étant entendu que ce seront toujours des mesures législatives à prendre par le Parlement, dans les pays où le Parlement doit intervenir.

Par conséquent, Sir William Pickford est d'avis qu'il n'y a pas de difficultés.

M. LE PRÉSIDENT. — Si personne ne demande plus la parole sur l'article 1, je le mets aux voix.

(*Adopté sans opposition*).
(*Carried without opposition*).

ARTICLE II.

« Le propriétaire du navire n'est pas tenu personnellement, mais seulement sur le navire, le fret et les accessoires du navire afférents au voyage, des dommages ou pertes occasionnés par les faits du Capitaine, de l'équipage, ou de toute autre personne asssistant le capitaine dans le service du navire

1° aux biens, marchandises et

The owner of a vessel shall not be personally liable, but shall be liable only to the extent of the value of the vessel, of the freight and of the accessories of the vessel appertaining to the voyage, for damage or loss caused by the Acts of the Captain, crew or any other person assisting the Captain in the service of the vessel to

1° the goods, merchandise or

tous autres objets quels qu'ils soient, se trouvant à bord du navire;

2° à un autre navire, aux biens marchandises et tous autres objets quels qu'ils soient, se trouvant à bord d'un autre navire;

3° aux digues, quais ou autres objets fixes.

other things whatsoever on board such vessel;

2° another vessel and to the goods, merchandise and other things whatsoever on board that vessel;

3° dikes, quays and other fixed objects ».

M. Judge Bradford. (United States) — On behalf of the Maritime Law Association of the United States we have an Amendment to propose to Article 2, which I will request my colleague, Mr. Brown, to present.

M. Brown. — Mr. President and Gentlemen of the Convention, the Delegates from the United States upon consideration of Article 2 have thought that the language of the Article, especially the first two lines, is somewhat imperfect. I am referring now of course only to the English version. I do not presume to criticise the language of the French version. We have thought also that this Article ought to define somewhat more clearly than it does what is meant by « the value of the vessel ». There is, as you all know, a difference between the laws of different Countries as to the time at which the value shall be taken. The value may be taken immediately before a disaster, or it may be taken immediately after the disaster, or it may be taken at the end of the voyage; and I gather from the Reports of the Committees that it is the sense of the Conventions that have preceded this one that the value shall be taken as at the end of the voyage; and that is the view of the American representatives here. I shall therefore, if I may, read an amendment to the first paragraph of Article 2, which is proposed by the American Delegates as a substitute for the first paragraph as it now stands :

« *The liability of the owner of the vessel shall not exceed* » *the value of the vessel at the end of the voyage exclusive of* » *the increase of value arising from any repairs made during* » *the voyage, together with the freight for the voyage and the* » *accessories of the vessel appertaining to the voyage, for* » *damage or loss caused by the act or default of the Captain,* » *crew, or any other person assisting the Captain, in the service* » *of the vessel* » — the remainder of the Article being unaltered.

In explanation of the changes which I propose, I may say that it has appeared wise and politic to the American Delegates' that when and after the voyage of a vessel is once properly begun, the vessel being supposed to be perfectly seaworthy and properly fitted out, the owner's liability shall not be increased owing to the fact that he has thereafter had occasion to make repairs on the vessel during the course of the voyage. We have thought that the shipowner might properly claim to be credited with any amount expended for repairs during the voyage — the necessary effect of such rule being to encourage shipowners, after a voyage is properly begun, to have their vessels put into ports of call, and to make repairs, where any storm or casualty on the voyage has rendered such repairs desirable. We have desired also at the very outset to make it quite clear that the value of the vessel is to be taken as at the end of the voyage.

M. LOUIS FRANCK (Anvers). — L'honorable délégué des Etats-Unis a proposé de substituer au paraphe I de l'article 2,— paragraphe que nous discutons en ce moment :

« *La responsabilité entière du propriétaire de navire ne dépassera pas la valeur du navire à la fin du voyage, exclusion étant faite de toute augmentation de valeur qui serait*

provenue de réparations faites pendant le voyage, mais y compris le fret du voyage et les accessoires du navire relatifs à ce voyage... »

Et alors vient la formule : « *pour dommages ou pertes causés par un acte ou une faute du capitaine, de l'équipage ou de toute autre personne assistant le capitaine dans le service du navire,* » de sorte que si je résume d'un mot la modification, elle est d'abord dans un changement de texte et ensuite dans une modification de fond.

La question de texte, c'est que l'honorable délégué des Etats-Unis fait ressortir très clairement que c'est la valeur à la fin du voyage. Il a, pour ma part, très exactement exprimé une idée dont nous sommes toujours partis dans nos travaux antérieurs et qui est d'ailleurs à la base du système de l'abondon et de la responsabilité limitée. La valeur à la fin du voyage, c'est évidemment la valeur après l'accident.

Il y a une exception à faire pour le cas de saisie; mais sauf ce cas, chaque voyage forme un tout, et pour ce voyage complet, la limite de la responsabilité sera la valeur du navire. En ce qui me concerne, cette formule est fort bonne.

Mais il ajoute alors ceci : c'est que les réparations que l'armateur aurait jugé utile de faire pendant le voyage, seront exclues. Qu'est-ce que cela veut dire ? Un procès, un décompte. Car on ne voit pas ce qui pourrait se produire autrement. Un navire a causé un sinistre; au port où le voyage se termine, on va faire abondon, et l'armateur va dire : pour des réparations au navire, vous allez me rendre autant.

Pour ma part, je ne pense pas que ce soit acceptable. S'il a le bénéfice du voyage, l'armateur doit en avoir les risques aussi. S'il a fait effectuer des réparations, que ce soit par suite d'un accident ou tout simplement de l'état

dans lequel il a voulu mettre son navire, ce sera son profit ou sa perte. Sinon, vous aurez des difficultés à l'infini pour chaque affaire.

Il est bien entendu aussi que cela comprend les réparations faites même avant l'accident ; il n'y a pas de motif pour les exclure.

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* *

I shall repeat in English what I have just said :

Our objection is this. We think that the text suggested by Mr Brown is quite clear and better than the text of the Draft-Treaty ; but as far as the merits of the case are concerned the modification does not meet, as far as I am concerned, with my personal approval. The exemption from liability of the increment of value arising from any repairs during the voyage is opposed to the principle that each voyage should form one risk ; the voyage is just as the owner has chosen to make it, so that if during the voyage he has made repairs the benefit will be for the owner. Further I think it will be going too far to say that you should draw a distinction between such repairs as have been made before the accident and such repairs as have been made after the accident. I fear it would give rise to endless difficulties.

M. B. C. J. Loder. (Rotterdam) — L'Association hollandaise n'a pas présenté un nouveau rapport à ce sujet. Vous vous souvenez qu'en Hollande, on a toujours considéré qu'il y avait trois systèmes juxtaposés qui étaient absolument inconciliables. Maintenant tout est changé. Depuis la Commission de Paris, nous avons à notre avis un vrai système, c'est le système allemand, qui nous paraît toujours le plus logique, avec un maximum emprunté au droit anglais. A ce système, nous pouvons nous rallier

entièrement. Ce serait inutile de faire des amendements si nous sommes d'accord sur le principe, parce que si nous arrivons à une conférence diplomatique, il est suffisant que nous ayons posé le principe; on trouvera toujours moyen de modifier la forme. Il serait donc superflu de nous attarder à ces questions secondaires. Cependant, on a proposé divers amendements. M. Verneaux en a proposé, l'Angleterre aussi, l'Amérique également.

Nous, de notre côté, nous avons de même un amendement, ne visant pas quelque chose de ce qui nous semble avoir été accepté, mais dont l'unique but serait de l'exprimer d'une façon plus exacte et plus claire.

Particulièrement dans l'article 2, « dommages et pertes occasionnés par le fait du capitaine ».

Quelle en est la signification? Est-ce que ces mots ne comprennent que les actes illicites, les quasi-délits du capitaine, ou peut-on dire qu'ils embrassent aussi les *engagements* du capitaine?

Avons-nous devant nous l'article 216 du code de commerce ou non?

J'ai posé cette question dans les discussions de Paris, dont j'avais l'honneur de faire partie, et M. Autran, l'éminent président, m'a répondu alors qu'on avait voulu exprimer en effet le sens des mots de l'article 216. « Faits du capitaine » comprend tout ce que fait le capitaine, quand il agit selon les engagements qu'il a contractés. Je me suis donc soumis. Mais il me semble néanmoins que d'autres pourraient tomber dans la même erreur que moi-même, et s'il en est ainsi, il me paraît utile de reprendre l'expression dudit article qui ne doit donner lieu à aucun doute. Si on n'a pas voulu s'écarter de l'idée continentale généralement acceptée, pourquoi ne pas le dire d'une façon nette et précise?

Notre amendement tendra donc à replacer dans le texte

le mot « engagement », estimant que les engagements du capitaine sont compris dans le domaine de la limitation de la responsabilité du propriétaire de navire.

M. C. D. ASSER. JR. (Amsterdam) — Est-ce qu'il ne vaudrait pas mieux produire les divers amendements à la fois?

Je pense que le texte de l'amendement mérite d'être approuvré tel qu'il est.

Le texte de l'avant-projet commence par établir un principe général, c'est-à-dire l'irresponsabilité des propriétaires de navires, et je pense que toutes les législations d'aujourd'hui se sont inspirées de ce principe.

La proposition de M. le délégué des Etats-Unis aurait pour but d'unir les dispositions de l'article 2 avec les dispositions de l'article 5. L'avant projet, avec beaucoup de clarté, après avoir, dans l'article 2, établi la responsabilité limitée en général du propriétaire de navire, vient à donner au propriétaire de navire le choix entre deux modes de libération; c'est-à-dire l'abandon aux créanciers ou bien la substitution de la valeur du navire ou le payement d'un forfait d'autant de Livres sterling par tonne de jauge du navire. Il me semble dans ces conditions que l'avant-projet exprime plus nettement, plus clairement que la proposition de MM. les délégués des Etats-Unis, que l'idée qui a présidé à la rédaction de l'avant-projet, est d'une portée générale.

Enfin, la proposition du rapporteur des Etats-Unis, ce n'est pas seulement une question de forme; mais elle envisage également une question de fond, une question de substance. Il met en doute en effet si le propriétaire a le droit d'abandon.

Nous arrivons à la même conséquence, parce qu'après avoir établi très nettement, très clairement l'irresponsabilité du propriétaire de navire, nous venons ensuite accepter la

proposition de M. le représentant des Etats-Unis que l'armateur a le choix ou d'abandonner ou de payer la contre-valeur.

Mr Brown. — Mr President and Gentlemen, I think it is highly importaut that there should be no ambiguity left in the Draft-Treaty as to the moment at which the value of the vessel should be fixed. The speaker who has preceded me who spoke in French, if I understood his remarks, is of the opinion that this treaty is intended to give to the shipowner the choice of saying whether that value shall be fixed at the time of the disaster or at the time of the ending of the voyage.

M. Louis Franck. — No, no, at the end of the voyage as I understood him.

Mr Brown. — If the value is to be taken at the end of the voyage, only, it seems to me it would lead to confusion and doubt to allow the present text to stand — a text which says that the liability shall be limited to the value of the vessel without saying when. The value of the vessel might well be construed to mean the value of the vessel when the limited liability proceedings were taken. I think that is objectionable..

Mr Leslie Scott. — You are referring, I think, to the Englisch text which is not a correct translation of the French text. The English text is merely a translation (by whom made I do not know) serving as a base for discussion; the French text is the authoritative text. The French text says that the owner is not personally liable. If you would not mind bringing up that amendment again on Article 5, I think then it will be in its right place.

Mr Brown. — I will consider it, however my own preference is very strong in favour of my amendment, but I will not take up any further time on this point. I may be allowed to say a few words as to my proposal to credit the owner with the increment of value due to repairs. It has seemed to the American Delegates that if a disaster should happen during the pendency of the voyage, and there is a considerable portion of the voyage still left to be prosecuted ; if the owner shall not be credited with the cost of the repairs to make good the ship with regard to any injury she may have substained in the disaster, there will be a temptation for the owner of the vessel if he knows then and there that the amount of the claims against him largely exceeds the value of the vessel, to cause that vessel to be towed perhaps to her destination, or at all events to proceed to that destination without adequate repairs being made ; and it has seemed to us that it was in the interests of commerce to offer an inducement to that shipowner to cause such repairs to be made.

(*Traduction orale par* M. Louis Franck)

M. Brown a fait observer que d'après lui son amendement est préférable au texte tel qu'il est formulé en anglais, et qu'il croit désirable en cas de réparations après un désastre que l'augmentation de valeur qui en résulte n'aille pas aux mains des créanciers, ce qui pourrait empêcher en cours de voyage, les armateurs de faire ces réparations. D'un autre côté, M. Scott vient de remarquer, en revoyant la traduction du texte français en anglais, qu'on s'est écarté un peu du texte français. Le texte français dit : « le propriétaire est tenu personnellement, » tandis qu'en Anglais on dit :

« The owner of the vessel is not personally liable, but shall be liable only........ »

M. Brown s'est déclaré d'accord pour retirer son amendement à l'article 5.

Mr. Brown. — A somewhat unusual system of juris-

prudence prevails in the United States owing to our dual system of Goverment; it is one of the provisions of our laws that although the Admiralty Courts, which are Federal Courts, are given cognizance over Maritime matters, nevertheless such jurisdiction of the Admiralty Courts does not exclude the jurisdiction of the Common Law Courts. Now the Common Law Courts have no right to proceed *in rem* at all; their right is confined to proceedings *in personam*. On account of that system if this Treaty shall provide that there is no right of action *in personam* but only a right *in rem* (as I understand the French version of Article 2 does provide) we shall have to say to this Conference that it will be hopeless to think of getting the adhesion of the United States to this Article; for to do so would require a fundamental alteration of our laws which will be entirely out of the question.

(*Traduction orale par* M. LOUIS FRANCK).

L'observation que vient de faire M. Brown est celle-ci : c'est qu'au point de vue de la législation des Etats-Unis, il pense qu'il faudrait trouver le moyen de donner une meilleure rédaction à cet article, étant donné que tel que le texte est formulé dans l'article 2, il semble que la responsabilité du propriétaire de navire deviendrait une responsabilité réelle, d'où des conséquences qu'il signale, au système double de juridiction qu'ils ont aux Etats-Unis. Certaines affaires *in rem* se déférent aux cours fédérales, tandis que les affaires *in personam* peuvent être introduites devant les cours de droit commun.

M. LANGLOIS. (Anvers) — Je trouve que la discussion qui s'engage maintenant, vient un peu mal à propos. Il est évident que si l'article 6 et les conditions prévues à l'article 6, sont admis, peu importe ce que l'on décide pour les cinq premiers articles.

J'étais parmi ceux qui sont partis en guerre, lorsque la question a été mise à l'ordre du jour, contre le système

anglais, et j'ai soutenu alors que, comme je le croyais, le système continental de l'abandon est préférable à tous les autres.

Les discussions auxquelles j'ai assisté depuis, les études que j'ai faites au sujet de la question, m'ont converti, et aujourd'hui, j'en suis arrivé à dire que le système anglais n'est pas sans mérite. Si donc l'article 6 est admis, je vous donne volontiers carte blanche pour le reste; vous pouvez admettre ce que vous voulez, puisque j'ai en tout cas la faculté de l'abandon ou un forfait de 8 £ la tonne.

Je vous demande donc s'il ne serait pas sage de modifier l'ordre du jour et de commencer immédiatement la discussion de l'article 6.

M. AUTRAN (Marseille). — Messieurs, pour comprendre le sens et la portée de l'article 2, il est absolument nécessaire de faire quelques pas en arrière et de se rappeler que lorsque la question de la responsabilité fut discutée pour la première fois à la conférence de Londres, on se trouvait en face de trois systèmes qui semblaient inconciliables. Il y avait tout d'abord le système des lois qui établissent la responsabilité personnelle des propriétaires de navire avec faculté pour eux de se libérer, pour les faits et engagements du capitaine, par l'abandon du navire et du fret. C'est le système qui est suivi en France, et notamment, en Italie, en Espagne, en Grèce. D'autre part, il y avait le système du droit allemand et des législations scandinaves qui supprimait la responsabilité personnelle des propriétaires de navires et y substituait une responsabilité réelle, et le créancier au lieu d'agir personnellement contre l'armateur, avait seulement le droit d'agir, par une action *in rem*, contre le navire. Enfin, il y avait le système britannique qui établissait la responsabilité indéfinie du propriétaire pour les engagements du capitaine

et la responsabilité limitée à £ 8 ou à £ 15, suivant qu'un dommage était causé à des navires ou à des marchandises ou aux personnes. On se trouvait donc là en face d'une situation insoluble. Toutefois, en y mettant un peu de bonne volonté de part et d'autre on en est arrivé au système actuel qui est une transaction entre les systèmes continentaux d'une manière générale, et le système anglais. Pour ceux qui ont lu le rapport de la conférence de Londres, la chose sera très claire. Puis arrivés à Paris, nous nous sommes demandés si la différence entre le système continental de l'abondan et le système du droit réel du droit allemand et scandinave était si grande qu'elle pouvait paraître. Nous avons été convaincus que non et nous avons également été persuadés que le système allemand, limitant à la chose elle-même la responsabilité de l'armateur, était un système qui constituait un progrès sur l'ancien système de l'abandon. Et alors, faisant abstraction de toute espèce d'esprit de classe et de patriotisme national étroit, nous avons considéré qu'il fallait se raillier au système allemand qui pour nous était le système le plus juste et était de nature à prévenir de plus toutes difficultés.

Ces principes une fois posés, il a fallu concilier le système allemand avec les décisions qui avaient été prises par les conférences de Londres et de Liverpool, et c'est pourquoi, dans l'article 6 on dit précisément que le propriétaire pourra se libérer par la valeur du navire, avec faculté de recourir au forfait posé par la loi anglaise. C'est encore ce qui vous explique que du moment que nous acceptons le principe allemand de la limitation de responsabilité à une action réelle, il faut s'en tenir à la formule dont nous nous sommes servis dans le texte français. Nous avons déclaré que le propriétaire de navire ne sera pas tenu personnellement. Et le traité qui interviendrait aurait pour objet de supprimer toutes les différences qui

pourraient exister à ce sujet pour le grand bien des plaideurs dans les pays anglo-saxons ; car M. Brown vous disait tout à l'heure les affaires *in rem* se jugent par les cours fédérales et celles *in personam* par les cours de droit commun. C'est une question de procédure. Mais alors, remarquez une chose, c'est que précisément le projet de traité que nous avons rédigé a pour but de faire disparaître la différence entre les actions *in rem* et les actions *in personam* et d'y substituer en tous cas une action réellement limitée à la valeur du navire.

Du moment que nous posons en principe la responsabilité réelle, la formule dont nous nous sommes servis embrasse tous les faits du capitaine, et par ces mots « faits du capitaine », nous avons entendu tous les engagements qui peuvent résulter d'un fait quelconque du capitaine, ceux résultant des contrats ou quasi-contrats, comme des délits ou quasi-délits.

La conférence aura à se prononcer évidemment sur ces questions, mais il ne faut pas qu'il y ait équivoque sur le point en discussion.

M. GALIBOURG (St-Nazaire). — Je voudrais ajouter simplement, après «faits du capitaine » et « engagements ».

M. FRANCK (Anvers). — Non, non ; nous ne discutons pas cela en ce moment.

SIR WILLIAM PICKFORD. (Londres) — May I say that I think the objection raised by Mr Brown may very easily be met. With regard to the first part of this Article which says « Le propriétaire du navire n'est pas tenu personnellement, mais seulement sur le navire », &c, I think, as that wording stands, it may be interpreted in England, and also in America, as taking away the right of personal

action, and, therefore, as altering the procedure. Now as I understand there is an almost insuperable objection in the United States to doing anything of the kind. There may be some objection in England, but I do not think it would be worth considering, because practically no Collision cases of any importance are tried in that way; but it seems to me that it was not intended by this Article to alter any method of procedure in that way, but simply to alter the extent of the liability : and, as the English translation of it originally stood, it does not alter the procedure, although I think the French text does. Now it seems to me that Mr Brown's objection on that head would be entirely met by a wording which should leave the right of action *in personam,* but limit the liability in that, as well as *in rem,* to the value of the ship. I think it really is a matter of drafting which there would be no difficulty at all in meeting. I do not think there is any intention by this Article to take away any right *in personam* as a matter of procedure which exists in England, or in the United States, or anywhere else. The intention is simply to say that a man shall not put his hand into his pocket and pay out of his other goods which are not in his ship, but shall pay simply the value of the ship. I think the objection of Mr Brown, which seems to be a formidable one if the abolition of the right of action *in personam* were insisted upon, is really an objection which can be met by an alteration in the drafting which would give to the United States, to England and to other nations, exactly what they want. I say nothing about the other matter raised by Mr Brown with regard to the increment of value — for the moment.

(*Traduction orale par* M. Franck.)

Sir William Pickford a fait remarquer que l'observation faite par M. Brown est fort importante, mais qu'il faut la placer à son véritable sujet.

M. Brown explique que dans le texte tel qu'il est rédigé, s'il était voté, on trouverait, aux Etats-Unis, un système nouveau ou différent de procédure de celui qui y est suivi, en ce sens que l'on ne pourrait plus poursuivre une action selon les mêmes formes et devant les mêmes cours où on les poursuit aujourd'hui, d'où cette conséquence que demander aux États-Unis d'accepter ce traité, c'est leur demander de changer leur organisation, et même de toucher à leur organisation comme corps moral dans son ensemble.

M. Pickford pense qu'en Angleterre également il y aurait de graves objections si la portée de l'article devait être de supprimer l'action *in personam*. Mais il pense que l'on a simplement en vue de limiter l'étendue de la responsabilité et non de changer la procédure. L'objection pourrait être levée par une modification de la rédaction.

M. L. FRANCK (Anvers). — Quant au fond, tout le monde est d'accord que le navire formera la limite de la responsabilité, comme il est précisé dans cet article. Il s'agit donc simplement d'une question de rédaction ; il faudrait modifier le texte de façon à donner satisfaction aux observations du délégué des États-Unis.

A cet égard, j'ai une proposition à faire ; c'est que M. Brown et M. Leslie Scott s'entendent pour proposer la révision du texte dans ce sens.

M. MARGHIERI (président). On propose donc de nommer une commission chargée de reviser la rédaction et se mettre d'accord sur une formule que l'on soumettrait demain à la Conférence. Je propose d'adjoindre M. Sieveking à cette commission.

(*D'accord*).

M. le Dr ANT. VIO (Fiume). — A mio modesto modo di vedere credo che l'art. 2 nel modo come esso è compilato, abbia bisogno di qualche spiegazione, o meglio ancora di qualche completazione.

L'art. 2. dice che il proprietario della nave risponderà non personalmente, ma colla sua nave, col nolo e cogli

altri accessorî, per i danni o perdite cagionate dai fatti del capitano. Ora questa parola «fatti» ha lasciato aperto il dubbio se con essa s'intendano soltanto le colpe del capitano, se siano o meno comprese anche le ommissioni del capitano, ed ancora se nella parola fatti siano o meno compresi i contratti, gl'impegni contratti del capitano.

La spiegazione del signor Brown ci ha da questo lato tranquillizati. Egli ha detto : solto la parola fatti s'intendono anche i contratti, e non solo i fatti positivi, ma le ommissioni.

Sono anch' io di questo parere. Siccome ho veduto che la società Germanica è stata in dubbio su questa opinione, io credo sia nostro dovere di chiarire questo punto, onde non ci possano più essere dubbi nella interpretazione della legge.

Propongo che questo articolo venga modificato, cioè venga completato nel senso che riguardi non solo i fatti positivi, ma anche le ommissioni ed i contratti continui del capitano.

La prima questione che s'è presentata nell' ultimo congresso, è stata : Quali saranno i casi della responsabilità limitata ?

Primo di tutto si è detto : per le colpe del capitano è naturale che l'armatore non debba avere una responsabilità illimitata. E tutti hanno trovata logica tale proposizione.

Poi è venuta la questione se sia da ammettere la responsabilità limitata nel caso dei contratti continui del capitano, e si è detto : E logico che l'armatore non possa rispondere pei contratti continui del capitano, senza un suo mandato diretto ed esplicito.

Quindi si è chiesto se si debba ammettere la responsabilità limitata quando si tratta d'un contratto continuo dell'armatore, ma la cui effettuazione sia demandata al capitano.

Ora, il Congresso di Liverpool ha escluso questo terzo caso, e ha detto che non debba aver luogo responsabilità limitata ma bensì responsabilita illimitata. E la grande maggioranza dei congressisti ha accettato questa soluzione.

Per quel che riguarda l'altro caso, se si debba, cioè, far luogo alla responsabilità limitata pei contratti continui del capitano, la maggior parte era d'opinione d'ammettere la responsabilita limitata. Ed infatti, o signori, tutti gli armatori coi quali ho parlato in proposito, mi hanno raccomandato caldamente di perorare in favore di questa regola ; cioè che l'armatore non sia responsabile pei contratti continui del capitano nella sua veste di capitano.

Quindi, o signori, io credo che sarebbe assolutamente necessario di completare questo paragrafo, aggiungendo le parole : « non solo pei fatti, ma per le ommissioni e pei contratti continui del capitano ».

E poi, o signori, c' è un altro punto in questo articolo che avrebbe pur bisogno d'uno schiarimento. Qui si dice che la responsabilità limitata viene applicata per tutti i danni o perdite. Ora, oltre ai danni materiali, esistano sempre i danni indiretti, il lucro cessante. Domando allora se fra i danni o perdite, sia da comprendere anche il danno indiretto. Io credo di si. Cioè mi spiego meglio : Nel progetto d'abbandono accettato dal Congresso d' Amburgo, la nave è resa responsabile pei danni ed interessi. In base a quel progetto, la nave risponde in caso d'abbandono non soltanto per i danni diretti o materiali, ma anche pei danni indiretti. Ora se la nave risponde nei casi di abbordaggio anche pei danni indiretti, pel lucro cessante, ne consegue la necessità che la responsabilità limitata sia estesa anche ai danni indiretti, perchè, altrimenti, cosa potrebbe nascere ? Che pei danni diretti vi sarebbe la responsabilità limitata e pei danni indiretti vi sarebbe la responsabilità

illimitata. Questo, naturalmente, non è nelle intenzioni del congresso, e quindi è necessario assolutamente di chiarire tale questione, e di mettere prima in concordanza il progetto sull' abbordaggio col progetto che si sta discutendo oggi.

Se dunque alla responsabilità limitata corrisponde un danno materiale, bisognerebbe modificare in questo senso il trattato da noi accettato sull' abbordaggio e dire poi che pei danni indiretti l'armatore non risponde affatto.

(*Traduction*)

A mon humble avis, je crois que l'article 2, tel qu'il est rédigé, a besoin d'être expliqué, ou mieux encore, d'être complété.

L'article 2 dit que le propriétaire de navire ne sera pas tenu personnellement, mais seulement avec son navire, le fret et les autres accessoires, des dommages ou pertes occasionnés par les *faits* du capitaine. Or, cette expression «faits» laisse place au doute quant à savoir si on entend par là uniquement les fautes du capitaine, si l'on y comprend au moins les négligences du capitaine et encore si dans cette expression «faits» sont compris les contrats — les contrats conclus par le capitaine.

L'explication de M. Brown nous a tranquillisés de ce côté. Il a dit: par cette expression «faits» on entend également les contrats; et non seulement les faits positifs mais également les faits de simple négligence.

Je partage cette manière de voir. Comme j'ai vu que l'Association allemande a hésité quant à cette opinion, je crois qu'il est de notre devoir d'éclaircir cette question, afin qu'il ne puisse y avoir aucun doute sur l'interprétation de la loi.

Je propose de modifier cet article en ce sens qu'il ne vise pas seulement les faits positifs, mais également les négligences et les contrats conclus par le capitaine.

La première question qui s'est posée à la réunion précédente a été celle-ci : « Quels seront les cas auxquels s'appliquera les responsabilité limitée ? »

Tout d'abord on a dit que pour les fautes du capitaine. il est naturel que l'armateur ne soit pas indéfiniment responsable. Et tous ont trouvé cela très logique.

Puis s'est posée la question s'il fallait admettre la limitation de la

responsabilité pour les contrats conclus par le capitaine, et il a été dit : « Il est logique que l'armateur ne peut répondre pour les engagements conclus par le capitaine sans avoir un mandat direct et explicite. »

Ensuite, on a demandé s'il fallait admettre la limitation de la responsabilité lorsqu'ils s'agit de contrats conclus par le propriétaire de navire, mais dont l'exécution incombe au capitaine.

Or, la conférence de Liverpool a exclu ce troisième cas et a dit que là, il ne devait pas y avoir lieu à limitation de responsabilité, mais que la responsabilité devait rester illimitée. Et la grande majorité des congressistes a adopté cette solution.

Quant à l'autre cas, — s'il fallait admettre la responsabilité limitée pour les contrats conclus par le capitaine, la majorité était d'avis qu'il y avait lieu à limitation. Et en fait, Messieurs, tous les armateurs avec lesquels j'ai parlé de cette question, m'ont recommandé vivement de parler en faveur de cette règle ; c'est-à-dire que l'armateur ne doit répondre des engagements conclus par le capitaine en vertu de ses attributions.

Par conséquent, Messieurs, je suis d'avis qu'il y a lieu de compléter ce paragraphe en ajoutant les mots : « non seulement pour les faits, » mais également pour les négligences et pour les engagemenrs con» tractés par le capitaine. »

Puis, Messieurs, il y a dans cet article un autre point qui demande d'être éclairci. Il est dit là que la limitation de responsabilité s'appliquera pour tous les dommages ou pertes. Or, en dehors des dommages matériels, il y a toujours des dommages indirects, la perte de bénéfice. Je demande donc si parmi les dommages il faut comprendre également le préjudice indirect. Je crois que oui. Je m'explique. Dans le projet sur l'abandon accepté par la conférence de Hambourg, le navire est déclaré responsable des dommages et intérèts. Sur la base dudit projet, le navire répond en cas d'abandon, non seulement des dommages directs et matériels, mais également des dommages indirects. Or, si le navire doit répondre, dans les cas d'abordage, également des dommages indirects, perte de bénéfices, ne faut-il pas nécessairement que la limitation s'étende aussi aux dommages indirects, car sinon, des litiges pourraient naître ? Pour les dommages directs, il y aurait la responsabilité limitée et pour les dommages indirects la responsabilité serait sans limites ? Cela n'est évidemment pas ce que nous voulons et c'est pourquoi il est absolument nécessaire d'éclaircir ce point et de commencer par mettre en

corcordance le traité sur l'abordage et celui qui nous discutons actuellement.

Si à la responsabilité limitée correspond toujours un dommage matériel, il faudrait modifier en ce sens le traité que nous avons adopté sur l'abordage et dire que pour les dommages indirects l'armateur n'est pas tenu en fait.

M. MARGHIERI (président). Avant de donner la parole à d'autres orateurs, je tiens à faire observer que cette question a été tranchée à Liverpool ; on a exclu les contrats.

M. FRANCK (Anvers). Permettez-moi de vous rappeler ce qui a été décidé à Liverpool. Voici comment la question se posait. D'une part, on proposait de prendre comme base le même principe que celui qui existe dans la plupart des législations continentales, c'est-à-dire les faits et fautes du capitaine, les contrats conclus par le capitaine et même les contrats conclus par l'armateur, mais rentrant dans la capacité légale du capitaine.

D'autre part, nos amis anglais demandaient que le principe de la responsabilité limitée ne s'appliquât qu'aux collisions. Une longue discussion s'est engagée à ce sujet; après qu'elle eut duré plus d'une séance, j'ai, pour ma part, repris encore une fois la parole et j'ai insisté en disant, — d'accord avec plusieurs de mes amis anglais : « Mais le Merchant Shipping Act va plus loin que vous voulez aller ; vous dites que vous voulez vous restreindre aux dommages dus à la faute du capitaine ; mais il y a des cas de responsabilité contractuelle qui tombent aujourd'hui sous l'empire de la responsabilité limitée du droit anglais et dont l'armateur peut s'affranchir en payant £ 8, notamment la responsabilité à l'égard de la cargaison à bord du navire responsable — qui est certes une responsabilité contractuelle. Et alors, si l'on veut bien reprendre

le rapport de la conférence, on verra que je disais : « If we are agreed on that point, that means we are agreed that we are going to apply the limitation not only to collisions and damage by accident to third parties, but also to damage to the cargo carried in the ship ; then there is not much difference between your views and the views of the other parties at the meeting. As far as I know the opinions of my foreign friends, I may say that they would most probably in many countries be prepared to meet you, and be prepared to say : let us take the scope of the limit as it at present stands in the British law. Therefore perhaps, the right thing might be to adjourn the remaining part of this discussion until to-morrow ».

Là-dessus, on a nommé une commission ; cette commission s'est réunie et on s'est arrêté à un texte emprunté dans les grandes lignes au projet de M. Mc Arthur, et portant : « Au cas où une perte ou un dommage est occasionné à des biens, marchandises, ou autres objets, quels qu'ils soient, se trouvant à bord du navire, ou 2) est occasionné par faute de navigation du navire à un autre navire, aux biens, marchandises ou autres objets quels qu'ils soient, se trouvant à bord de cet autre navire ; 3) aux digues, quais ou autres objets fixes »....

On a clairement fixé ce que l'on faisait : que l'on dérogeait au droit commun ; en d'autres termes que pour le reste, chaque nation continuerait à faire ce qu'elle voudrait, et qu'il n'y avait lieu d'intervenir internationalement que pour les cas les plus importants, et quand cela nous était expliqué de la façon la plus précise, je me suis levé, après m'être mis d'accord avec mes amis continentaux, et j'ai dit :

« On behalf of the various Continental nations here, I may say we have found our way to agree with what has fallen from Mr. Mc Arthur. We are willing to accept that

the ground of this new system of limitation of liability should be exactly the same, as far as the International Treaty is concerned, as the present British law, so that contracts would only be included in it so far as contracts are included actually in your practice and in our statute. I hope this will meet your approval. »

Le président a ensuite expliqué encore une fois cet objet. Il a ajouté que chaque nation gardait sa loi ; et cela a été voté à l'unanimité.

Le seul point sur lequel on pourrait examiner la proposition de M. Vio est celui-ci. M. Vio signalait le cas suivant : il suppose un abordage, puis une assistance ; dans la suite, le navire assisté serait rendu responsable pour l'abordage. M. Vio dit : la réclamation pour abordage et pour assistance devrait être couverte par la valeur du navire. Mais, pour ma part, je ne vois pas le moyen d'ouvrir la discussion à ce sujet. Nos amis anglais ne pourraient......

M. C. D. ASSER J^r (Amsterdam). Si j'ai bien compris l'exposé de M. Frank, il s'agit de savoir si la conférence actuelle adoptera le système suivant lequel la limitation de la responsabilité comprendra les questions d'abordage, d'accident de mer ainsi que les contrats, ou bien si la limitation, réglée par le présent avant-projet, ne se rapportera qu'aux obligations *légales*.

M. LOUIS FRANCK (Anvers). Ce n'est pas un système général ; on ferait un traité sur ces points particuliers parce qu'ils seraient les plus importants et que les représentants anglais ne peuvent pas aller au delà.

M. C. D. ASSER J^r (Amsterdam). S'il en est ainsi, je dois dire au nom des délégués hollandais que nous ne

pouvons pas l'accepter. Nous sommes ici pour faire une règle générale. Ou bien nous devons abandonner notre œuvre ou bien nous devons faire une règle générale qui comprenne toutes les obligations, soit légales, soit contractuelles. C'est pourquoi notre délégation néerlandaise a pris la liberté de présenter un amendement à l'article 2, que j'ai eu l'honneur de soumettre à Monsieur le président — amendement qui se prononce d'une façon nette et précise sur cette matière. L'amendement est ainsi conçu :

L'article 2 sera rédigé comme suit :

« *Le propriétaire de navire n'est pas tenu personnellement, mais seulement sur le navire, le fret et les accessoires du navire afférents au voyage, des obligations, soit conventionnelles, soit légales autres que celles touchant aux dommages causés à des personnes, contractées sans autorisation spéciale du propriétaire, par le capitaine, l'équipage ou toute autre personne assistant le capitaine dans le service du navire dont le propriétaire répond.* »

Voilà le principe général : la limitation de la responsabilité soit conventionnelle, soit légale. Nous avons déposé cet amendement parce que nous pensons que dans le texte actuel de l'article 2, il y a une lacune.

Il était dit, dans le texte présenté à la conférence d'Amsterdam « et aux engagements contractés en vertu des attributions légales du capitaine ». On a modifié ce passage à Liverpool et dans la Commission de Paris et on a dit que cette modification ne constituait qu'une pure question de forme. Je me permets d'être d'une opinion contraire. On peut soutenir que l'expression : « faits du capitaine et de l'équipage » comprend seulement les fautes, et ne s'étend pas aux autres actes quelconques pouvant entraîner une responsabilité pour le capitaine. S'il en est ainsi et dans l'hypothèse que l'on suivrait le droit anglais sur ce point, on aurait exclu, sans le vouloir peut-être, les res-

ponsabilités résultant du contrat de transport. Quand il s'agit de la responsabilité *ex recepto*, le chargeur n'a pas à prouver une faute à charge du transporteur. Il faut étendre la disposition pour y compendre également cette responsabilité. La responsabilité *ex recepto* résulte du contrat lui-même, et non d'un fait du capitaine. Or, le texte qu'on propose maintenant dit « les dommages occasionnés par le fait du capitaine ». C'est donc le chargeur qui devrait prouver. C'est pour ce motif que notre Comité néerlandais a proposé l'amendement que j'ai eu l'honneur de vous lire.

M. le Dr ALFRED SIEVEKING (Hambourg). I want to say a few words on the question raised by the American delegate, which Sir William Pickford suggested could be put in accord with the view of the Conference. Mr Autran said there were three systems; one the German system of limiting the liability of the owner; secondly, the French system. and, thirdly, the British system : but the German system and the French system were about the same. Now as to this particular point which has been just now alluded to, there is in fact a great difference between the two Continental systems. If you say that the owner is personally liable, but that he is allowed to give up his ship and to say « I am going to pay you with my ship », then you can always bring an action against the owner, whether he is in possession of the ship or not. But if you adopt the German system, and as I understand also the Scandinavian system, of the liability *in rem*, then you cannot bring your action, in cases where the owner's liability is limited, against the owner, when once he has given up possession of the ship. You can only bring an action against the person who is in possession of the ship. That you see is a great difference. I do not think there will be much per-

sonal disagreement about this point, but I only wanted to point out to you this great difference between the two systems, and that is not a point of such slight importance as that it would be done away with in a few minutes.

The resolution of the Paris Commission has been submitted I think in nearly every country to the opinion of the various interests, bodies and corporations; and in our country several Chambers of Commerce have given their opinion upon the resolutions we have arrived at in Paris. As I understand the meaning of choosing such a Commission, it was to have the basis of the draft-treaty first examined by the various countries, and then to see how far those countries agreed; and then again to come together and discuss perhaps a new treaty made up by the same Commission, having regard to the various opinions proffered by the various countries. If I speak now it is on behalf of the German Association; and perhaps you know that one of the most important Chambers of Commerce in Germany is the Chamber of Commerce of Hamburgh. They have written a very elaborate and clear opinion upon the Resolutions we arrived at in Paris, and there are some very strong objections against those Resolutions if they are taken in the sense merely as repeating the British law. I am not going to enter into details. I think if we arrive here at setting down the first general outlines, we have already done a good work, and for the purpose of settling the details it is much preferable to refer the matter to a Commission. But I should like to propose to you the following outlines, and I do hope that in course of time we shall agree upon this. Shipowners' liabilities must be limited — that is a point we are all agreed upon — because shipowners cannot carry on business without a limitation. But by limiting shipowners'

liabilities you curtail the right of creditors. The creditors cannot help it — they have a debtor whose liability is limited; therefore you must somehow compensate the creditor for the loss that you inflict upon him, with which he has nothing to do, and which is inflicted upon him for the benefit of the shipowner. Well the only way of compensating the creditor is to give him preference over other creditors, and the only means of doing that is to grant him a lien. Therefore our first point is that in every case where the shipowner's liability is limited (I will talk later about cases in which shipowners' liabilities should be limited) the creditor should have a lien; and, secondly no other lien should exist but in those cases where the shipowners liability is limited. The necessary consequence of this second point is that the Legislatures of the various countries should not be allowed to create, or to permit to exist, any other lien except those we agree upon, which should have priority of rank over the lien that we admit, And in order to put maritime credit on a healthy basis, which was the only intention of the Paris Commission in doing away with a great number of maritime liens, no country should be permitted to create, or allow to subsist, any other lien at all. Therefore our two points upon which we insist are: First, that where there is a limitation o liability, there must be a lien; and, Secondly, no other lien should subsist but in those cases that we admit here. I think in course of time we shall all agree upon this.

The third point is, How do you limit Shipowners liabilities? Well that has been settled by the words « Ship and freight » or as you say « £ 8 a ton ». I should like to propose a slight modification of the latter point. Even if the owner chooses to pay £ 8 a ton, also in that case the creditor should have a lien. That is only the necessary consequence of our two first proposals. Now in which

cases shall the owner's liabilities be limited ? Well I think if there is any reason which can be adduced for limiting shipowners liabilities apart from the general fact that he cannot carry on his business without limitation, the reason is that he cannot control the acts of the Master and crew. and that he is under the necessity of entrusting to the Master and crew certain acts which have to be performed during the voyage. This leads naturally to allowing a limitation of the shipowner's liability in cases where the Captain and the crew actually do damage to the things on board. That is I think the meaning now given to the words « les faits du Capitaine ». You must take the words in their widest sense, just as I think M. Asser said, and I understand Dr. Vio too. Therefore the owners liability must be limited also in cases where the Master enters into transactions within the scope of his employment. Not only that, but also his liability must be limited in all cases where the owner himself has entered upon transactions, but where it is the duty of the Master to carry out those transactions and those contracts in so far as damage has arisen out of the acts of the Master. Of course the third case which constitutes really « un fait du Capitaine » is the case of general average; for instance where he throws goods overboard, or sacrifices any other interest of the ship or cargo. Therefore we propose, first of all, that there should be no case of limited liability without a lien ; secondly no lien except those we admit here ; and, thirdly, you must extend the case of limited liability also to the transactions entered into by the Master, or the transactions entered into by the owner, but which have to be executed by the Master, where damage has arisen through the acts of the Master ; and to cases of general average and salvage.

Gentlemen, I only submit these general remarks to the

Conférence. I think upon points of detail we shall easily agree, and that is a matter which must be left for discussion on a future day.

(*Traduction orale par* M. LOUIS FRANCK)

D'après la conception de l'Association Allemande de droit maritime, il y a un lien intime entre le système de limitation de la responsabilité des propriétaires de navires et le système des hypothèques et priviléges maritimes. Si vous dites à certains créanciers ; vous n'allez avoir d'autre gage qu'un navire déterminé, alors vous devez, en toute équité, donner à ce créancier un privilége sur le navire, pour que d'autres créanciers ne viennent pas partager avec lui le gage. Notre principe est donc : que tous les créanciers à qui la limitation de la responsabilité est applicable, ont droit à un privilége; mais il faut, pour que l'effet utile du traité se produise, que dans tous les Etats, il n'y ait point d'autres créances, privilégiées que les priviléges internationaux tels qu'ils ont été établis. Quant a limitation de responsabilité elle doit s'entendre pour les actes, les engagements du Capitaine, dans le sens le plus large, et s'appliquer aussi au cas de sauvetage.

Je crois que c'est là la substance de ce qui a été dit.

M. F. C. AUTRAN (Marseille).

Je crains que la discussion ne s'engare un peu, et il serait peut-être bon de la ramener au texte de l'article que nous discutons.

Pour arriver à unifier les législations, nous avons, à la Commission de Paris, rédigé un texte qui consacre vos résolutions précédentes et qui établit cette option entre la limitation réelle de la responsabilité, telle qu'elle est actuellement en vigueur, — *at is stands*, comme dit le texte anglais, — et d'autre part le droit forfaitaire, comme il existe dans la loi anglaise, de £ 8 la tonne.

Il semblerait que ce projet dùt avoir pour but et pour conséquence d'arriver à unifier la responsabilité des navires dans tous les cas où cette responsabilité peut être

engagée. Or, la responsabilité du propriétaire de navire peut être engagée par le délit, par le quasi-délit du capitaine, d'une part ; par les contrats et engagements de l'autre, et il me paraît absolument impossible, — et j'appelle la plus sérieuse attention de nos amis anglais sur ce point, — de vouloir faire un projet qui ne prendra qu'une tranche de cette responsabilité et d'en laisser une autre tranche à des lois ordinaires, pour qu'elle continue à être régie par les lois nationales. Comme le disait très bien notre collègue M. Sieveking, vous ne pouvez pas créer des créanciers de diverses catégories. Au lieu de faire disparaître les divergences, vous arriverez à les accentuer.

C'est là l'ordre d'idées sur lequel je me permets d'appeler votre sérieuse attention, et je m'adresse spécialement à nos amis anglais. La législation anglaise se sépare sur beaucoup de points des principes qui sont admis sur le continent d'une façon en quelque sorte générale et elle y est remplacée en beaucoup de matières par la jurisprudence, que les cours anglaises peuvent changer lorsqu'elles le jugent utile. Mais lorsque nous avons à faire un projet de loi internationale, c'est-à-dire à formuler des principes qui vont être la règle absolue et uniforme de toute l'humanité civilisée, il me semble que nous devons nous préoccuper de partir d'un principe directeur, à la lumière duquel nous pouvons résoudre d'une façon entière les questions de responsabilité, car sinon, il est bien certain que nous ne serons pas suivis par les Gouvernements et par conséquent, l'œuvre que nous aurons faite ainsi sera en vain.

(*Traduction orale par* M. FRANCK)

Monsieur Autran has just said you cannot have two systems, because, as he points out, following M. Sieveking, the man to whom you will say « You are to be paid out of the ship, or out of the £ 8 a ton » must get a privilege on the ship and on the £ 8 a ton. On the

other hand, if in national law there is a wider range of liens in regard to which the system of limited liability applies; when it comes to sharing out of the produce of the vessel, or of the £ 8. under the international law, as you are going to give the privilege in both those cases, as far as limitation is concerned, they will come in *pari passu* and rank equally as between themselves, and you will have an intricate system which it will not be possible to adopt. Therefore, M. Autran thinks that the amendment of the Dutch Committee should be accepted, the amendment being that the limitation of liability should extend to damage done by the default of the Captain, and in the same way on contracts entered into by him. M. Autran added that in his opinion the Continental Governments would strongly object to two systems, one according to International treaty, and another according to National law.

M. CAPELLE (Bruxelles).

Il s'est produit tout à l'heure une proposition qui m'a puru rencontrer un accueil favorable auprès de la conférence. C'était de renvoyer à l'examen d'une commission les questions sur lesquelles l'accord ne serait pas réalisé.

Nous voyons réunis ici des jurisconsultes éminents et des hommes d'affaires versés dans les matières maritimes, qui sont on ne peut mieux qualifiés pour trouver les solutions transactionnelles opportunes. En les priant de se concerter à cet effet dans des réunions préparatoires, nous faciliterions la tâche de la Conférence et nous assurerions le succès de l'œuvre poursuivie.

Vous n'ignorez pas, messieurs, que certains Gouvernements désirent ne donner la consécration diplomatique aux deux arrangements précédemment élaborés concernant l'abordage et l'assistance maritime que lorsqu'on aura pu arrêter les bases d'une entente sur les questions inscrites au programme de la présente Conférence. Il importe donc que nous poussions aussi avant que possible nos travaux. L'institution d'une commission permettrait l'élaboration de formules précises sur lesquelles porteraient ensuite les

discussions publiques ; en procédant ainsi, l'on pourrait espérer être en mesure de soumettre à la prochaine conférence diplomatique des textes complets qui seraient approuvés en même temps que les autres arrangements.

(Verbal translation by M. LESLIE SCOTT.*)*

M. Capelle makes the observation upon the discussion that has just taken place, that it is important to bear in mind that these treaties are eventually coming before the Diplomatic Conference and that it is of extreme importance that we should realise here, from those who are able to inform us from their knowledge of the views that their Governments are likely to take, whether or not any given suggestion is likely to meet with the approval of the Governments of the respective countries when the Code comes before the International Diplomatic Conférence. He further pointed out that the time is coming when the Diplomatic Conference, which has already sat, will sit again to consider the previous Codes on Collision and Salvage, and that the probable course taken will be to bring before that Conference the Code which we now have under consideration. He therefore suggests that it is of great importance we should, as far as possible, agree together upon the wording of this present draft-Code, so that it will not give rise to unexpected objections at the Diplomatic Conference, in order that the matter may go through the Diplomatic Conference more easily, and be accepted without any further serious alteration. For that purpose he suggests that those lawyers from the different countries who are here present to-day should deal with this question, getting rid as far as possible, of the difficulties which have been mentioned, but always having in view the knowledge they have of what their Governments are likely to accept.

M. MIRELLI (Naples). — Permettez-moi de prendre la parole sur cette question. Vous vous rappelez, Messieurs, qu'à Amsterdam et à Liverpool, vous vous êtes prononcés sur un avant-projet sur la limitation de la responsabilité. Il semblait alors qu'une décision unanime eut été prise, et que tout le monde fut d'accord sur sa portée ; mais à présent, nous nous trouvons devant le rapport fait, après la

réunion de Paris, par MM. Sieveking et Hennebicq qui disent :

« La modification apportée à l'article 2 n'est que de pure forme, puisque le système allemand de la limitation de la responsabilité du propriétaire est adopté comme base de tout l'avant-projet, et que les articles 5 et 6 accordent au propriétaire la faculté de se libérer de cette responsabilité par le payement de la contre valeur en argent. Les mots « faits du capitaine et de l'équipage » ne comprennent pas seulement les fautes nautiques, mais également tous actes quelconques pouvant entraîner une responsabilité pour le propriétaire ».

Si donc l'article 2 comprend même les engagements du Capitaine je crois que nous serons tous prêts à nous rallier à l'article 2, mais si cet article ne les comprend pas, comment ferons-nous pour remanier les législations continentales : C'est pourquoi je soumets à Monsieur le Président, qui a présidé la commission qui a rédigé ce rapport, la demande de bien vouloir renseigner la conférence sur ce point, afin que pour l'avenir, les membres de la conférence sachent avec certitude si l'article tel qu'il est conçu, comprend tous les engagements du capitaine, ou bien s'il ne comprend uniquement que les « faits du capitaine ».

Il me semble qu'il est avant tout nécessaire de s'éclaircir sur ce point.

M. L. BENYOVITS. — Je tiens également à présenter quelques observations sur la question des « faits du Capitaine », et je trouve aussi que comme expression, ce terme est trop large : il vaudrait mieux préciser. Mais si, pour préciser, il faut énumérer les « faits du capitaine », je crains bien que cela ne rende pas la chose plus claire, mais cause au contraire une plus grande confusion. Il y a des actions du capitaine qui sont en rapport strict avec la navigation

technique et avec l'expédition. Par exemple, un capitaine engage l'équipage, ou bien engage des marchandises, ou les vend pour les besoins du navire. Si les actions en question du capitaine rentrent dans la sphère prescrite par la loi, le propriétaire est responsable pour ces actes, mais sa responsabilité est limitée. Cependant, le capitaine est le représentant du propriétaire de navire ; ce propriétaire peut accorder un plus grand pouvoir à ce capitaine, et si le capitaine pose un acte qui entre dans cette sphère accordée par le propriétaire, ce dernier sera responsable sans limites.

Puis, si les actes du capitaine excèdent la sphère prescrite par la loi, on pourrait ajouter que le propriétaire absolument n'est pas responsable.

Je pense qu'on pourrait mieux préciser la chose ainsi.

M. Artelli. — Ho preso la parola, perché mi ha fatto realmente impressione questa responsabilità assoluta che si fa all' armatore pei danni e le perdite del capitano.

Oggidi, o signori, in caso di abbordaggio, il naviglio investito risponde del danno a tutto el carico. Ma finora nessun caricatore aveva domandato all' armatore, in tal caso, la rifusione del danno recato al proprio carico. Perchè ? Perchè tutti gli armatori, che avevano previsto questo caso, avevano messo nelle loro polizze di carico che non erano mai responsabili del danno di navigazione del capitano ; e cosí erano sollevati da ogni rischio.

Pure, un somme giurista di Genova ha detto che se anche la polizza ha sollevato il capitano, la legge è molto chiara. Io, in uno di questi casi, ho vinto in Italia in prima istanza, ho vinto in appello, ed ho vinto ancora in Cassazione. La cassazione ha deciso che un armatore non puô essere responsabile degli errori marittimi del capitano.

Anch' io sono d'accordo col signor Autran, che non

bisogna domandare molto per non correre il rischio di non ottenere nulla ; ma vorrei che l'armatore fosse responsabile di tutto fuorchè degli errori marittimi. Tutti i governi dovrebbero riconoscere in questo senso la responsabilità dell' amatore.

Questo io raccomando al bureau della Conferenza.

M. LOUIS FRANCK (Anvers).

Si j'ai demandé la parole, c'est pour signaler à l'assemblée que les divergences qui semblent nous séparer ne sont pas aussi considérables qu'elles en ont l'air. Quand l'honorable M. Sieveking disait : Il faut qu'on donne un privilége à tous les créanciers à qui on opposerait la responsabilité limitée, j'ai signalé à l'assemblée que d'après le traité sur les Hypothèques et Priviléges maritimes, nous ne donnons plus de privilége qu'aux créances suivantes :

Frais de justice, gages du capitaine et de l'équipage, les indemnités dues pour sauvetags et enfin, indemnités dues à raison de fautes nautiques du navire.

Par conséquent, si le deuxième avant-projet de traité passe dans cette forme, l'objection de M. Sieveking serait rencontrée. Qu'est-ce qui nous sépare, pratiquement, au point de vue de cette responsabilité : la question des contrats. Or, le contrat essentiel, celui dont nous devons surtout tenir compte, c'est le contrat de transport, et.......

M. AUTRAN (Marseille). — Et les prêts à la grosse.

M. LOUIS FRANCK (Anvers).

Nous ne lui donnons plus de privilége. Le prêt à la grosse est devenu un instrument suranné. Les banques à Liverpool et à Paris même, signalent à quel point ce prêt est devenu d'un usage de plus en plus restreint, et à ce point de vue, la Commission de Paris, dont M. Autran

lui-même faisait partie, a été d'accord pour ne plus accorder de privilége à cette créance.

A côté de cela, il y a un groupe de créanciers à raison de contrats et des conséquences de l'assistance et naissant de fortunes de mer. Je crois désirable que sous ce rapport, nos amis anglais reconnaissent qu'une formule qui comprendrait l'indemnité d'assistance dans les limites de la responsabilité restreinte, est une formule acceptable.

Un abordage a eu lieu, puis une assistance. Le navire assisté est responsable à l'égard du navire coulé et toute sa valeur se trouve absorbée par les dommages qu'il a occasionnés ; comment va-t-on régler le sort de l'indemnité d'assistance ?

Est-ce qu'on admettra que l'indemnité d'assistance sera due par l'armateur personnellement, ou bien est-ce qu'on admettra que pour cette indemnité il bénéficie de la responsabilité limitée ? D'après la formule adoptée à Liverpool, on pourrait soutenir que la responsabilité limitée n'est pas appliquable aux indemnités d'assistance. Mais alors, dans les circonstances que je rappelais il y a un instant, le propriétaire de ce navire pourra devoir plus que la valeur de son navire et sera dans une situation pire que si les sauveteurs avaient laissé le bâtiment se perdre !

Ce n'est pas logique. Le sauvetage se fait pour celui qui a intérêt à la conservation du navire. Or dans notre cas, c'est le créancier qui à défaut du navire perd son recours.

Je prie nos amis anglais de considérer s'ils ne pourraient faire un pas de plus, et accepter que la limitation de responsabilité s'applique également au recours du chef d'assistance et de contributions en avarie commune.

M. MARGHIERI (Président).

Je prie M. le Secrétaire de donner lecture du télégramme envoyé à M. Beernaert, aujourd'hui :

S. E. MINISTRE BEERNAERT,

Bruxelles.

« Conférence Unification Droit Maritime inaugurée » aujourd'hui. Votre absence regrettée par tous. Votre » nom a été applaudi comme noble initiateur important » mouvement. Conférence me donne mandat vous expri- » mer ses sentiments vive admiration et sympathie.

MARGHIERI

président Conférence. »

La séance est levée. — The sitting is adjourned.

SÉANCE DU JEUDI, 26 SEPTEMBRE
SITTING OF THURSDAY, SEPTEMBER 26th

M. MARGHIERI (*président*).

Messieurs, j'ai l'honneur de vous donner connaissance du télégramme reçu de Sa Majesté le Roi d'Italie :

RACCONIGI, Reggia. 25/9 19/40

Dr. Pr. A. MARGHIERI

Sua Maestà il Re ha con viva soddisfazione appreso dal cortese telegramma della S. V. l'avvenuta inaugurazione dell' 8° congresso internazionale di diritto marittimo che ha in cotesta città così degna sede. — Il nostro Sovrano lieto del devoto pensiero a lui rivolto dall'Assemblea cui ella presiede nell' iniziarsi di lavori che seguirà col più vivo interesse e coi più fervidi voti di felice successo mi ha incaricato di porgere a V. S. vive grazie e pregarla di rendersene interprete verso gli eminenti giuristi costà convenuti e specialmente verso quelli esteri per la simpatia dimostrata alla Casa di Savoia ed all'Italia che si onora della loro presenza e dei loro studi.

Il ministro E. PONZIO VAGLIA.

(*Traduction*)

A Monsieur le Dr. Prof. A. MARGHIERI,

Sa Majesté le Roi a appris avec une vive satisfaction, par votre courtoise dépêche, l'ouverture du 8e congrès international de droit maritime, réuni dans cette ville si digne d'en être le siège. Notre Souverain, est heureux du témoignage gracieux que l'assemblée que vous présidez lui adresse au début de ses travaux. Elle suivra ceux-ci

avec le plus vif intérêt, fait des vœux pour leur succès et m'a chargé de vous présenter ses vifs remerçiments en vous priant d'être son interprète auprès des éminents juristes réunis à Venise et spécialement auprès des délégués étrangers, et de leur dire combien Elle est sensible à la sympathie exprimée à la maison de Savoie et à l'Italie qui s'honore de leur présence et de leurs travaux.

Le Ministre E. PONZIO VAGLIA.

Limitation de la Responsabilité des Propriétaires de Navires

Limitation of Shipowners' Liability

Continuation de la discussion
Discussion continued

M. LOUIS FRANCK, (Anvers). — Messieurs, au nom de mon ami Autran et au mien, j'ai l'honneur de faire au sujet de la question des contrats en matière de responsabilité limitée, la proposition suivante :

Des négociations, des discussions ont eu lieu entre différents groupes, et il nous paraît que pour prendre une décision raisonnée sur cette question, qui est très difficile, il serait utile que nous ayons au préalable devant les yeux l'ensemble des résolutions que nous nous proposons de prendre, — spécialement, il paraît bien qu'il y ait un rapport intime entre le traité sur la responsabilité des propriétaires de navires et le traité sur privilèges maritimes.

Notre proposition serait donc que la conférence ne continue pas en ce moment l'examen d'ensemble de cette question. Nous réserverions ce point jusqu'au moment où nous aurons terminé la discussion sur le reste du traité

sur la responsabilité et du traité sur les hypothèques et priviléges.

Les opinions ont été exprimées dans les divers sens. S'il y a encore des amendements, ces amendements pourraient être lus, et quand nous saurons quel sera, au point de vue des créances privilégiées, le régime du navire, — comme il y a certainement un rapport entre cet ordre d'idées et l'ordre d'idées de la limitation de la responsabilité, — nous reprendrons cette dernière question et nous nous prononcerons sur le point de savoir si nous nous en tenons à la formule adoptée à Liverpool ou s'il faut l'étendre et y comprendre les obligations du capitaine contractées en cours de voyage, sans mandat spécial de l'armateur. Je suis amené à vous exposer cet avis, afin d'éviter des discussions inutiles; je me permets d'ajouter que cette proposition a été suggérée par l'honorable M. Autran.

Ma proposition est donc de susprendre la discussion de l'article 2 et de reprendre le reste du traité sur la responsabilité.

* * *

In the name of my friend M. Autran and in my own name, we propose as regards contracts to reserve the point until we have finished the discussion of the treaty as to responsibility and the treaty as to privileges. Opinions have been expressed on one side and the other, and if there are yet some amendments they could be brought forward when we know what are the privileges of the creditors.

MR LESLIE SCOTT. — I do not know whether all the English gentlemen present have appreciated the proposition. As regards the point of contract raised, it is simply to postpone the further consideration of Article 2, which is inextricably bound up with the question of liens, until

we have dealt with the lien Code, and then deal with those two together. Article 2 of the Limitation Code and the Lien Code will be considered together. Meantime we are going on to finish the Limitation Code.

M. MARGHIERI (*président*). — S'il n'y a pas d'objections à la proposition de M. Franck il reste entendu que nous renvoyons l'examen d'ensemble de l'article 2 jusqu'après l'examen de l'avant-projet sur les Hypothèques et Privilèges.

(*Adopté nem. contra. — Carried nem. contra*).

Nous passons donc au paragraphe 2.

M. LOUIS FRANCK. — The text that we are going to discuss now is that marked primo under Article 2 « aux biens, marchandises, et tous autres objets quels qu'ils soient, se trouvant à bord du navire ». In English « the goods, merchandise or other things whatsoever on board such vessel ».

Le texte de l'article en discussion, est le paragraphe qui porte le n° 1 à l'art. 2.

M. MARGHIERI (Naples).

Y a-t-il des observations sur cet article ?

M. COGLIOLO. — Io non volevo venire alla tribuna perchè non avevo da fare altro che una semplice osservazione. Ed è che sarebbe bene rinviare non solamente la prima parte dell' art. 2, ma tutto l'art. 2 al punto in cui parliamo dei privilegi, perchè vi è una stretta relazione fra le due parti dell'articolo secondo. Questo era ciò che io volevo proporre.

Ma se per caso el congresso credesse di dover trattare ora dell' art. 2, a me interesserebbe di richiamare l'attenzione del congresso sopra la responsabilità del proprietario

d'una nave in rapporto alle persone. Io so bene che questo punto è stato lasciato pensatamente fuori dal comitato internazionale; io so bene che per trovare la famosa lex-maris di cui si parlava ieri, si è creduto bene di non toccare quello che riguarda le persone.

Ma noi non dimentichiamo, o egregi colleghi, che tutto quello che riguarda la responsabilità in rapporto alle persone, costituisce la parte principale (economicamente e numericamente parlando in rapporto ai fatti) della responsabilità totale dei capitani che si dànno al mare, e dei rapporti fra l'assicurazione ed il commercio di mare, perchè di fronte ad una illimitazione di responsabilità in rapporto alle persone, il calcolo assicurativo rende impacciata l'industria assicurativa in rapporto al mare.

Ora io non ho il coraggio di domandare all' assemblea che voglia mettere nell' art. 2 una norma che dica : « la responsabilità limitata riguarda anche i fatti ed i contratti in rapporto alle persone »; non ho tale coraggio, perchè degli atti preparatori ho appreso che sopra questo punto non è ancora matura la intesa internazionale, ed è necessario andare passo a passo. Ma io credo che sia bene che sotto un' altra forma si possa affermare il principio che io ho indicato; prima di tutto sotto forma di una esplicita dichiarazione nei nostri verbali, ed in modo che il signor presidente autorizzi i segretarî a prenderne nota formalmente; che cioè argomento della prossima conferenza internazionale sarà appunto la formulazione di un progetto per la responsabilità in rapporto alle persone; poi vorrei che il principio fondamentale a cui il futuro progetto deve ispirarsi, sia quello di cercare per quanto è possibile la limitazione della responsabilità anche in rapporto alle persone.

In altri termini io desidererei che la dichiarazione da farsi non solamente riguardasse il proposito di occuparcene,

ma l'idea di ricondurre la personalità giuridica del naviglio, limitata oggi in rapporto ai beni, anche in rapporto alla responsabilità per le persone.

E finalmente io credo che sarebbe necessario che fosse nominata a questo proposito, possibilmente durante queste sedute, una commissione la quale nulla proponesse poi di decidere, ma preordinasse questi concetti.

E, ad ogni modo, per quanto *l'avant-projet* non abbia voluto a nessuna persona accennare, credo che a nessuno sarà discaro, che a tutto il mondo potrà interessare che questi scienziati qui riuniti, che questa raccolta di pensieri ed interessi possa e voglia elevare i suoi studi anche in rapporto a quello che costituisce il punto principale della nostra navigazione.

Quando voi pensate, o signori, al crescere continuo delle speculazioni emigrative, quando voi pensate al valore indubbiamente maggiore dei danni recati alle persone in rapporto ai danni recati alle merci, e quando voi siete mossi, come lo siete, da quel grande principio — come diceva il grande nostro Genovese — di non spaventare i capitali del mare e di fare in modo che i capitali non sieno alterriti dalle onde terribili, ma che vadano fidenti al mare libero, voi mi potrete perdonare che malgrado sappia io essere questo non argomento precipuo della discussione, abbia oggi avanzato un' idea che è da tutti divisa, e della quale spero rimarrà una traccia nel verbale.

In questo modo noi faremo davocro qualche cosa di utile dal punto di vista internazionale, perchè è già molto la limitazione in rapporto ai beni, ma ciò che più importa (è bene che sia detto con franchezza) è la limitazione in rapporto alle persone.

(*Traduction*)

Je n'avais pas l'intention de venir à la tribune parce que je n'avais à faire qu'une simple observation. C'est qu'il serait bon de revoir, non

seulement la première partie de l'article 2, mais l'article 2 tout entier, au moment où nous traiterons des privilèges, parce qu'il y a une relation étroite entre les deux parties de l'article II. Voilà ce que je désirais vous soumettre.

Mais si par hasard la conférence pensait devoir traiter en ce moment de l'article 2, je désirerais vivement attirer l'attention de l'assemblée sur la question de la responsabilité du propriétaire de navire en ce qui concerne les personnes

Je sais bien que ce point a été laissé de côté, et cela à dessein, par le Comité Maritime International; je sais bien que pour trouver le fameux *lex-maris* dont on parlait hier, on a cru bon de ne pas toucher à ce qui se réfère aux personnes.

Mais n'oublions pas, chers collègues, que tout ce qui est relatif à la responsabilité par rapport aux personnes constitue la partie principale (économiquement parlant et quantitativement, par rapport aux faits) de la responsabilité totale des capitaines qui naviguent en mer, et des rapports entre l'assurance et le commerce maritime, parce qu'en présence d'une responsabilité illimitée à l'égard des personnes, le calcul du prix de l'assurance rend fort difficile l'industrie de l'assurance maritime.

En ce moment, je n'ai pas le courage de vous demander d'ajouter à l'article 2 une disposition, disant : que la limitation de la responsabilité s'appliquera également aux faits et aux contrats par rapport aux personnes, parce que j'ai appris par les rapports préliminaires que sur ce point les idées en général ne sont pas encore mûres, et qu'il est nécessaire de marcher par étapes. Mais je crois qu'il est bon que sous une autre forme, on puisse affirmer le principe que j'ai indiqué en premier lieu, sous la forme d'une déclaration explicite dans nos procès-verbaux, et de telle manière que M. le président autorise les surêtaires à en prendre formellement note.

C'est que l'on mette à l'ordre du jour de la prochaine conférence la rédaction d'un avant-projet sur la limitation de la responsabilité par rapport aux personnes ; ensuite que le principe fondamental dont le futur projet doit s'inspirer est qu'il faut réduire autant que possible la responsabilité du propriétaire de navire par rapport aux personnes. En d'autres termes que le vœu ne soit pas seulement exprimé de s'occuper de la matière, mais que l'on exprime l'idée que la personnalité juridique du navire, limitée ici quant aux marchandises, le soit de même quand il s'agit de la responsabilité envers les personnes.

Enfin, je crois qu'il serait nécessaire de désigner, à la suite de cette

proposition, et si possible encore dans cette session, une commission non pas pour se prononcer sur la question, mais pour en faire l'étude préparatoire.

De toute manière, puisqu'on n'a pas voulu que l'avant-projet s'occupât des personnes, je crois qu'il ne déplaira à personne, mais que tout le monde entendra avec intérêt que les hommes compétants réunis ici veulent également étudier cette question qui constitue pour notre navigation le point essentiel.

Si vous prenez en considération l'augmentation constante du transport des émigrants, si vous réfléchissez à la proportion bien plus forte des dommages causés aux personnes, en comparaison de ceux causés aux marchandises ; partant de ce grand principe — comme le disait notre grand Génois — qu'il ne faut pas épouvanter les capitaux de la mer mais faire en sorte que les capitaux ne soient pas effrayés par l'onde terrible, et qu'ils viennent confiants, à la mer libre — vous me pardonnerez d'avoir mis en avant (bien que je sache que cette question n'est pas le point principal en discussion) une idée qui mérite à tous égards votre attention, et dont j'espère qu'il restera trace au procès-verbal.

De cette façon, nous aurons fait quelque chose d'utile au point de vue international ; sans doute, il est fort bien d'avoir limité la responsabilité pour les dommages aux biens ; mais ce qui est bien plus important encore (et il est bon de le dire ouvertement) c'est la limitation à l'égard des personnes.

M. Marghieri (*président*). — Messieurs, Avant que le débat ne se prolonge sur ce point, je crois devoir appeler l'attention de la Conférence sur des points d'ordre général.

Nos conférences d'Amsterdam et de Londres se sont occupées de cette question. Nous aurions bien voulu étendre le principe de la limitation de la responsabilité aux personnes, mais nous avons dù renoncer, pour le moment tout au moins, à ce point, car nos efforts ne doivent pas viser uniquement ce qui nous semble absolument juste ; il nous faut également tenir compte de ce qui paraît généralement acceptable de la part de tous les Etats dont les délégués font partie de la conférence, et alors, puisqu'il y avait des associations nationales qui n'auraient

jamais pu accepter de résoudre d'une manière positive et absolue ce point là, nous avons dû, pour le moment tout au moins, je le répète, le mettre de côté.

Mais il y a encore une autre observation à faire, et je prierai M. Cogliolo et ses collègues de bien vouloir accepter la proposition que je me permets de faire au nom du Bureau, à savoir : que nous devrions pour le moment nous limiter à consigner un vœu dans nos procès-verbaux. Le procès-verbal de nos séances pourrait très bien relater le vœu émis par ces Messieurs ; mais permettez moi de vous rappeler — et c'est là la seconde observation que j'ai à faire — que les statuts du Comité Maritime International et des associations nationales affiliées ne permettent pas qu'une proposition quelconque soit soumise à un vote ou à une discussion, afin qu'elle forme l'objet des travaux et des études de la prochaine conférence. Nos statuts exigent absolument que le Bureau du Comité Maritime International examine la question au préalable, et décide si elle doit former l'objet des travaux et des études d'une conférence.

Evidemment, le Bureau peut prendre envers l'assemblée cet engagement d'étudier la question, et n'a pas besoin pour cela d'une commission spéciale, lorsqu'il trouve dans nos travaux le sentiment et le désir d'en arriver à ce point. Rien de mieux donc que de demander que le Bureau du Comité Maritime remette la question à l'examen et décide de la présenter comme matière à discussion à l'ordre du jour de l'une des prochaines conférences.

(*Translated by* M. LESLIE SCOTT)

Professor Cogliolo suggested just now in his speech that the question of Limitation of Liability for loss of life and personal injury ought to be dealt with ; and he made a further suggestion that it ought to be brought up before the next meeting of the Conference. The President has pointed out that that question has already been put on

one side by agreement, and that under the organisation of the Comité Maritime International, the Bureau alone has theright to decide what questions shall be brought up at the next Conference; and therefore the proposal to discuss this matter with the view of referring it to the next Conference is out of order, being a matter within the exclusive jurisdiction of the Permanent Bureau. Consequently the question of personal liability and limitation of claims to personal liability cannot now be dealt with.

M. le prof. VIVANTE. — Ho chiesto di parlare per rilevare l'importanza di ció che disse is mio collega Cogliolo a proposito della responsabilità pel trasporto delle persone. Perchè a me pare che la conferenza di Liverpool non abbia tenuto abbastanza conto della inscindibilità, della unità delle due questioni.

E mi spiego. Oggi ci sono molte compagnie che fanno trasporti di emigranti e di merci ad un tempo. Ora, se queste compagnie sono favorite della responsabilità limitata pel trasporto delle merci, sono peró esposte a questa incognita sconfinata d'una responsabilità illimitata pel trasporto delle persone. Dette compagnie si trovano in una condizione assolutamente insostenibile, perchè quelli che affidano loro le merci, corrono il rischio che tutta la fortuna di queste imprese di navigazione sia assorbita dai sequestri e dai pignoramenti falti in nome delle famiglie o delle vittime del trasporto.

Dunque le due questioni sono assolutamente inscindibili.

Di più io vi domando, o signori : Quando voi dite che diamo ai creditori come garanzia il valore della nave, che cosa dite in realtà? Non dite forse che la compagnia è esposta con tutto il suo all'azione di risarcimento dei danneggiati e delle vittime?

Attraverso i secoli, i nostri maggiori hanno ritenuto pure le due questioni inscindibili, e nel nostro dirritto l'armatore

può liberarsi di tutte le responsabilità, sia che riguardino le cose o le persone.

Quindi non possiamo usare due pesi e due misure, a tutto vantaggio delle imprese che trasportano merci, ed a tutto danno delle imprese che trasportano merci e persone.

Dal momento che voi non vorrete arrivare a questo punto, io spero che vorrete ritolvere tale problema che, come ho detto, è inscindibile.

(*Traduction orale par* M. Betocchi).

M. Vivante vient de dire ce qui suit. Les compagnies qui transportent en même temps et des passagers. et des marchandises, — ce qui arrive fort souvent en Italie, — seraient soumises à deux poids et deux mesures. Elles auraient la responsabilité limitée quant au transport des choses, mais seraient responsables sans limites quant au transport des personnes. En présence des demandes qui pourraient être introduites devant les tribunaux par les passagers ou par leur famille, il n'y aurait plus de compagnies de navigation qui oseraient assumer les risques des transports de passagers, parce que la responsabilité limitée en ce qui concerne les marchandises, serait annulée, pour eux, et remplacée par une responsabilité illimitée envers les passagers.

(*Verbal translation by* Mr. Scott).

The point raised was very shortly this : that the shipowners whose ships carry at the same goods and passengers ought not to be submitted to a limited liability for damages to goods and to an unlimited liability for personal injuries, and the delegate who spoke last pointed out that unless the two are dealt with together in the Limitation Code, the matter would remain in an unsettled condition. No Italian Shipowner could bear the responsibility of the unlimited liability, and therefore he asks the Conference to take the two together. I may add that the same remark applies of course to this matter as to the one which was already dealt with, that it is for the Bureau to deal with if it thinks fit.

M. Marghieri (*président*). — Je prie Messieurs les orateurs de m'accorder un instant d'attention. Nous n'op-

posons pas du tout une fin de non recevoir à leur proposition. Ce n'est là ni l'intention du Comité Maritime International, ni celle de la présidence.

Mais je me permets de faire remarquer que la question n'est pas à l'ordre du jour, et on ne peut donc pas prendre de résolution à ce sujet, — ce serait contraire aux statuts du Comité Maritime.

Ensuite, je répète encore une fois que le Comité Maritime prendra la question en considération avec le sentiment d'arriver à une solution, si possible.

Il est donc impossible d'accorder encore la parole pour un objet qui ne figure pas à l'ordre du jour.

M. CHARLES LE JEUNE (Anvers). — Messieurs, je pense que M. le président s'est exprimé d'une façon très claire et qu'il est de la plus grande urgence que nous ne perdions pas en vains débats sur cette question un temps qui nous est si précieux. Nous n'aboutirons pas à épuiser notre véritable ordre du jour si nous nous occupons de questions qui ne sont pas à l'ordre du jour.

Avec la plus grande déférence pour les orateurs qui ont réintroduit une question déjà jugée, je prie donc Monsieur le président, en vertu de son pouvoir discrétionnaire, de bien vouloir mettre fin à cette discussion. Et si une difficulté devait se présenter à cet égard, je demande la clôture et que les associations nationales prononcent, si oui ou non on mettra fin à ce débat.

M. MIRELLI (Naples). — Suivant votre ordre d'idées, puisque la question n'est pas inscrite à l'ordre du jour et que l'assemblée n'est pas préparée à la discuter, je suis prêt à mettre fin à ce débat. Mais d'autre part, j'ai vu dans les rapports de plusieurs associations nationales, surtout dans les rapports de l'Association hongroise et de l'Asso-

ciation italienne, qu'ils ont relevé qu'il faudrait faire une œuvre complète sur ce point. Je me permets donc d'adresser au Bureau une motion qui tranchera la difficulté. C'est la suivante :

« *La Conférence de Venise, en reconnaissant la haute impor-*
» *tance de l'œuvre de la Commission de Paris, considérant*
» *que l'avant-projet de traité sur la limitation de la responsa-*
» *bilité des propriétaires de navires ne vise que la responsabilité*
» *pour les dommages causés aux biens, laissant de côté les*
» *dommages aux personnes, qui donnent lieu toujours et*
» *partout aux plus graves discussions et aux plus sérieux*
» *conflits sur la responsabilité des propriétaires de navires en*
» *compromettant leurs intérêts et ceux des victimes, invite le*
» *Bureau Permanent du Comité Maritime International à*
» *déléguer la même commission pour compléter la matière de*
» *la limitation de la responsabilité sur les dommages aux*
» *personnes, et pour présenter à la prochaine réunion un*
» *avant-projet complémentaire analogue sur les bases qui*
» *seront adoptées dans la présente conférence ; et passe à*
» *l'examen de l'avant-projet formulé et mis à l'ordre du jour* ».

(*Verbal translation by* Mr. LESLIE SCOTT).

Gentlemen, the resolution proposed by the M. le Duc Merelli is this :
« *The Conference of Venice recognising the great importance of the work of the Commission that sat at Paris, considering that the Avant-projet on the Limitation of Liability only includes liabtlity for damage to goods, leaving on one side personal injuries and loss of life which give rise always and everywhere to the gravest questions and the most serious conflicts as to the responsibilities of Shipowners by compromising their interests und the interest of the sufferars, asks the Permanent Bureau of the International Maritime Committee to appoint the same Sub-Committée to complete the scheme of limitation by including personal injuries and loss of life, and to present that Avant-Projet, or that further elaboration of the scheme based on the resolutions to be taken by this Conference to the next meeting of the Conference* ».

M. LESLIE SCOTT (London). — That is the proposal made.

M. le President, may I add that the provisional assent of England to this Limitation Code as it stands, with its optional basis, was from the very start given upon the sole and absolute condition that no question of personal injuries or loss of life be touched at all. I think there is no doubt whatever that if any suggestion were made to introduce that into the scheme now, the whole scheme from the point of view of England, would fall absolutely to the ground.

(*Traduction orale par* M. LOUIS FRANCK)

La Grande-Bretagne, en acceptant la loi de l'abandon, avait subordonné cette adhésion à la condition qu'au point de vue international, on n'y mêlerait pas les questions relatives à la responsabilité pour pertes de vies, donc pour dommages aux personnes.

M. LOUIS FRANCK (Anvers). — Si Monsieur le président me permet d'ajouter un seul mot, laissez-moi dire à mes amis italiens quel est le motif qui a dicté cette exclusion. Toutes les questions touchant à la vie des personnes, passionnent surtout en Angleterre, au plus haut point l'opinion publique. Personne ne peut y toucher. Jamais le Parlement ne se déciderait à modifier cette responsabilité, ou à la réduire. Je crois d'ailleurs que les intéressés même ne s'en soucient guère car un des représentants les plus éminents disait à une de nos précédentes conférences que « si l'on y touchait, ce ne serait pas pour diminuer cette responsabilité, mais bien pour l'augmenter ». Et si l'Angleterre donnait l'exemple, je ne crois pas qu'avec les idées qui dominent actuellement, les autres pays tarderaient longtemps à suivre.

Que va donc être la situation ? Elle va être celle-ci : que les questions relatives aux vies humaines seront réglées

par les lois nationales. Chaque pays apprécie quel est l'ensemble des mesures qu'il doit prendre au point de vue de l'intérêt qu'inspirent les vies humaines. Ce sont des considérations qu'on accepte, à tort ou à raison, comme étant d'ordre plutôt national.

Et j'ajoute que nous devons bien nous pénétrer de cette idée qu'il ne suffit pas que les principes auxquels nous nous rallions, soient justes ; mais nous devons tenir le plus grand compte de ce fait que dans le pays qui représente la moitié du tonnage du monde, on ne veut à aucun prix qu'on touche à cette question.

Et ce n'est pas le seul motif. Si vous saviez ce qu'il a fallu de peines pour aboutir où nous sommes, on nous ferait crédit et on nous laisserait le temps de faire avec beaucoup de prudence et de circonspection, ce qu'il y a moyen de faire sous ce rapport. Et il est inutile d'ajouter que le Comité Permanent s'attachera à étudier votre question le jour où les opinions changeraient. Mais ne le lui imposez pas.

Je vous demande pardon d'insister ; mais il ne faut pas, si vous voulez que nous fassions de la besogne pratique, que nous nous occupions de choses qui nous conduiraient tout simplement à un procès-verbal de carence. En effet, si nous mettions à l'ordre du jour de la prochaine conférence cette question sur laquelle on a tant insisté, nous la discuterions pendant quatre jours sans avancer d'un pas, nous aboutirions à un fiasco complet, et l'autorité que nous avons conquise dans le monde serait gravement compromise.

M. MIRELLI (Naples). — Messieurs, je sais bien que cette matière n'est pas à l'ordre du jour, aussi je n'insiste nullement pour qu'elle soit discutée. Tout ce que je désire, et c'est là le but de la motion que j'ai proposée, c'est une

promesse complète que dans la prochaine conférence on examinera la question.

M. MARGHIERI *(président)*. — Messieurs, il y a d'abord une proposition de clôture de M. Le Jeune, que je vais mettre au vote, s'il le faut; chaque nation aura à donner un vote. Si cette proposition n'est pas acceptée, je mettrai la motion de M. le duc Mirelli aux voix.

M. COGLIOLO. — Quando noi votiamo l'ordine del giorno puro e semplice, vogliamo dire questo : che all' ordine del giorno la questione non c'è e che non la possiamo votare. La votazione dell' ordine del giorno puro e semplice, non esclude per nulla che la questione debba essere tolta dall' esame del Comitato permanente, e che essa possa formare obbietto di una prossima discussione.

(*Traduction*)

En votant l'ordre du jour pur et simple, nous voulons dire ceci : que la question ne figure pas à l'ordre du jour et que nous ne pouvons donc la mettre au vote.

Mais le vote de l'ordre du jour pur et simple n'exclut en aucune façon que la question fasse l'objet d'un examen par le Bureau Permanent, ni que ce dernier puisse la soumettre ultérieurement à la discussion.

M. MARGHIERI (président). — Il y a une proposition de M. Le Jeune, qui propose l'ordre du jour pur et simple. Cette proposition a la précédence absolue. Je la mets aux voix.

Que ceux qui approuvent l'ordre du jour de M. Le Jeune . . . .

M. COGLIOLO. — Aujourd'hui, nous n'avons pas à nous occuper de la discussion de cette question; nous sommes

tous d'accord là-dessus, mais même si l'ordre du jour de notre collègue est approuvé, il restera toujours l'ordre du jour proposé par M. Mirelli sur lequel il faudra se prononcer. C'est ainsi que vous l'entendez, n'est-ce pas?

M. MARGHIERI (président). — Non! Nous avons pour le moment un ordre du jour pur et simple, c'est-à-dire que quand l'ordre du jour pur et simple est voté, la question est vidée définitivement et on ne peut plus y revenir.

Je crois cependant qu'en votant l'ordre du jour pur et simple, la pensée qui est au fond de la motion de M. Mirelli n'est pas du tout exclue, avec cet amandement toutefois que ce ne sera pas la Commission de Paris qui devra examiner la question. La Commission de Paris est morte, puisqu'elle a terminé son mandat; mais c'est le Bureau Permanent du Comité Maritime International qui examinera s'il y a lieu de mettre la question à l'étude.

Si nous nous entendons sur ce point, c'est-à-dire que le Comité Permanent examinera la question, qui pourra être reprise éventuellement à une prochaine conférence, il me semble que vous pouvez voter l'ordre du jour pur et simple.

M. CRESPI (Rome). — Nous demandons seulement que le Bureau Permanent s'engage à l'aborder.

M. MARGHIERI (président). — Comme membre italien, je suis tout à fait de cette opinion mais comme président d'une conférence internationale, je dois bien faire respecter les règles de votre organisation. Or, suivant ces règles, on ne peut pas inviter le Comité Maritime à présenter absolument à une prochaine conférence cette question. C'est absolument contre nos statuts, et personne ne pourrait l'accepter. Mais, en votant l'ordre du jour, nous pouvons prendre cet engagement, tout à fait sérieux de reprendre

l'examen de la question, si nous pouvons surmonter les graves difficultés qui, jusqu'à l'heure présente, nous ont empêchés de présenter la question à une conférence de ce Comité.

Je vous prie encore une fois de ne pas insister, de ne pas vouloir ce que nous ne pouvons pas.

Je mets donc aux voix la proposition de M. Le Jeune.

M. LOUIS FRANCK (Antwerp). — I will just put the question in this way : Those who are in favour of the proposal made by M. Le Jeune to the effect that this question is not on the Order of the Day, and that no imperative order or mandate is to be given to the Permanent Bureau, the Permanent Bureau being left to examine whether it is possible to discuss it—those who accept that proposal will say Yes. Those who are in favour of the Resolution of the M. le Duc Mirelli, suggesting that the question be put on the Order of the Day of the next Conference and that the Commission be embodied, will say No.

Tous les pays votent pour la proposition de M. Le Jeune, un seul accepté.

Alle countries, with one exception, vote the motion of M. Le Jeune.

M. MARGHIERI (*président*). — L'ordre du jour de M. Le Jeune est donc voté. M.M. Je crois devoir faire une déclaration pour M.M. les représentants des Gouvernements étrangers, afin d'éviter toute interprétation erronée. Nous avons reçu de la part des divers Gouvernements la communication de leur délégation avec la mention que ces messieurs suivent les travaux de la conférence pour en faire rapport : *ad audiendum et referendum.* C'est donc sans participation aux votes.

Lorsque les Gouvernements se font représenter officiellement aux conférences diplomatiques la majorité ne lie pas la minorité. Mais il en est autrement ici, et les votes émis par les délégués des Gouvernements pourraient donc les lier.

M. Cogliolo. — Est-ce que le compte-rendu de la conférence rapportera la demande que nous avons exprimée ?

M. Louis Franck. — Certainement.

M. Marghieri (*président*). — Nous abordons donc l'article II, 2° et 3°.

M. Galibourg. — J'ai l'honneur de vous demander de bien vouloir modifier quelque peu le paragraphe 3, n° 3° de l'article 2 de l'avant-projet en discussion. Ce 3° est ainsi conçu : « pour dommages causés aux digues, quais et autres objets fixes ».

Je crois que cette désignation n'est pas suffisante. Il faudrait, à mon sens, ajouter encore « fixes ou mobiles ». En effet, actuellement les ports ne comportent pas seulement dans leur organisation des murs et des quais. Il dépend des ports, des rades, de l'entrée des fleuves, bien d'autres ustensiles et bien d'autres objets servant à la navigation. Vous avez, par exemple, les docks flottants, les bateaux-pilote, les feux flottants qui sont au large, les dragues avec toutes leur accessoires, les bouées phonétiques et lumineuses. Bien des Gouvernements ont édicté des peines assez graves contre les capitaines qui volontairement ou involontairement, par inobservation des règlements, ont causé des dommages à ces objets. Eh bien, l'armateur peut-il être responsable des faits du capitaine qu'il ne peut prévoir ni empêcher et ces objets mobiles ne doivent-ils-pas rentrer précisément dans les dispositions du paragraphe 3° ?

Remarquez que quand on examine les travaux du Comité Maritime International, on voit que beaucoup de nations se sont préoccupées de cette question. La France, la Norvège, la Belgique, la Hongrie, dans leurs travaux préparatoires, ont tous visé le cas et tous ont dit qu'il y avait lieu par conséquent d'élargir l'article 3 et d'y comprendre non seulement les ouvrages fixes, mais aussi les ouvrages mobiles. Vous verrez quelle est l'importance de cette question, car souvent parmi ces ouvrages mobiles, il y en a qui ont une importance considérable et peuvent entrainer pour les armements des responsabilités énormes. Il me semble donc que puisqu'on parle de quais ou d'autres objets fixes, il est indispensable d'ajouter au mot « fixes » les mots « ou mobiles ».

Maintenant, comment devra être rédigé l'article ? Ici, une difficulté se présente. Dans l'avant-projet qui nous est soumis, on parle tantôt d'ouvrages mobiles « d'un port » ; d'autres encore parlent des « rades », d'autres enfin parlent des « côtes ». Il y a là évidemment quelque chose de complexe. Il faut que notre rédaction, si vous adoptez la théorie que je soutiens, soit suffisammcnt claire et précise pour embrasser tout ce qui de près ou de loin peut être considéré comme rentrant dans le paragraphe 3 au point de vue maritime. Si nous parlons des « côtes », des « rades », cela ne suffit pas, car il y a encore autre chose : les estuaires, l'entrée des fleuves. Puis, il me semble qu'il ne faut pas allonger trop la disposition, mais qu'il faut trouver une formule qui comprenne d'une façon générale tout ce que je viens d'énumérer. Ne serait-il, dans ces conditions, pas bien de dire : « AUX DIGUES, QUAIS, OU AUTRES OBJETS MARITIMES FIXES OU MOBILES ».

Je me sers de cette expression, parce que dans certains ports qui sont à l'embouchure de fleuves, comme Anvers, Rotterdam, Rouen, il pourrait y avoir des difficultés pour

la partie du fleuve située entre le port et la mer. Voilà le motif de ma proposition. Cela comprendra évidemment tout ce qui se rapporte de près ou de loin à l'objet qui nous occupe.

J'ajoute que je ferais cette proposition avec un grand nombre de nations, comme vous pourrez le voir dans les rapports préliminaires.

M. BERLINGIERI (Gênes). — Il faudra supprimer cependant le mot « MARITIME » parce qu'à mon avis, cela restreint plutôt la portée de la disposition.

M. GALIBOURG. — Soit, je suis d'accord là-dessus.

Mr. HARRY RISCH MILLER (London). — Mr President and gentlemen, on behalf of our English colleagues I think we may say that we are entirely in accord with the remarks that M. Galibourg has made with reference to the objects included in sub-section 3 of this paragraph 2. It seems to us that those objects to which he has alluded, such as buoys, lightships and that sort of thing, would actually be covered by the words which are in the section, because it is quite obvious that although they are floating they are nevertheless fixed to the bottom of the sea ; and also the doctrine of *ejusdem generis* would be applied to those matters, and so all maritime objects upon the sea would be included. But as far as the English community here is concerned we have no objection in fact to the addition of the words « ou mobiles » to the clause after the word « fixes ». I do not know whether M. Galibourg insists upon the word « maritimes » being inserted. I am inclined to think that it is unnecessary for the purpose of this clause; and we are quite agreed, if M. Galibourg is willing to suppress the word « maritimes », that the words « ou mobiles » should be added.

M. GALIBOURG. — Je suis d'accord.

M. GEORGES LECLERCQ (Bruxelles). — Permettez-moi, Messieurs, d'ajouter quelques mots à ce qui vient d'être dit à ce sujet. Nous sommes quant à nous, parfaitement de l'opinion émise. Seulement dans certains ports, spécialement au port d'Anvers, il arrive quelquefois qu'un navire cause des dommages d'une nature particulière : c'est par exemple, lorsqu'un navire coule au fond de l'Escaut, l'Administration des Ponts et Chaussées exige que le propriétaire du navire fasse l'enlèvement de l'épave. Ce dommage est plus grand quelquefois que celui causé à des ouvrages d'art, c'est le dommage résultant des frais de relèvement. Ordinairement, en effet, les dommages au mur du quai ne sont pas très importants, mais quand il faut relever une épave, la faire sauter à la dynamite, cela coûte 100,000 ou 200,000 francs. Nous vous demandons donc, — et surtout dans l'intérêt d'une bonne justice et d'une bonne répartition des dommages — d'insérer dans votre article 3 une disposition qui permette de limiter également la responsabilité dans le cas où il y a des dommages causés, non seulement aux autres objets fixes, mais également AUX VOIES NAVIGABLES.

M. MARGHIERI, *président*. — Il n'y a aucune difficulté, je pense, à accepter votre amendement, mais il se rapporte plutôt à l'article 9.

(*Traduction orale par* M. LESLIE SCOTT).

M. Leclercq suggests that in some ports, such as Antwerp, if damage is done to the bottom of the harbour or stream by a ship, the ship is held responsible by the River Conservancy Authority. He suggests that that liability is analogous to these others and ought to be included. It is pointed out by the President that that question would perhaps, as a matter of language, come in more conveniently under

Article 9, where the question of the removal of a wreck from the navigable stream is dealt with. I may add in my own name that. Subject to that point I think we are all agreed that we can include this further item of liability by putting it into the Article 9 which deals with the question of the removal of wrecks etc.

M. BROWN (United States). — M. President, it has been the law of the United States for many years that the general subject matter of injuries inflicted upon wharves, piers, bridges and fixed objects is not within the maritime law, and, therefore, necessarily could not be subject matter of limitation of liability; for the limitation of liability is a subject of maritime and admiralty law. It is, however, the opinion of my distinguished colleague and myself that this matter is not one that affects our Constitution, but is a matter of general Statute law and might be modified by Statute. My colleague and myself as a matter of personal preference would prefer to retain the law of the United States unaltered; but we feel that this is a Conference in which, as far as possible, the Delegates should give way to each other, and we feel that this is one of the matters upon which we may give way if that will lead to a general compromise and adjustment of our difficulties. We, therefore, are not going to move the suppression of sub-division 3 of this Article, and we are in accord with the amendment already proposed of that sub-division.

(*Traduction orale par* M. BETOCCHI).

M. Brown a dit que la limitation de la responsabilité pour les dommages causés aux piers et autres objets fixes ne rentre pas dans la loi maritime des Etats-Unis, et que dans ces conditions, il préférerait voir disparaître le paragraphe 3; mais dans le but de rendre plus facile une entente entre les nations, il consent à ce que ce point soit inclus dans le projet qu'on discute aujourd'hui.

M. CHARLES LE JEUNE (Anvers). — Messieurs, je voulais faire une simple observation, et appuyer ce qu'a dit M. Leclercq au sujet des voies navigables. Il a été dit que cette question se rattache à l'article 9; mais je pense qu'il vaut mieux l'insérer à l'article 2, car incontestablement cette question des voies navigables est très importante au point de vue de la limitation. Certains canaux, notamment le Canal de Suez, appartiennent à des entreprises privées.

Si le mot « voies navigables », qui est une expression très générale, est inséré, je pense que vous couvririez mieux tous les cas qui peuvent se présenter; c'est une expression très heureuse et que je crois qu'il est bon de relater au 3° de l'article 2.

M. LESLIE SCOTT. — M. Le Jeune suggests putting into sub-Section 3 of Article 2 the words « voies navigables » (navigable ways) which include canals, rivers and everything else; pointing out the damage to them comes in more correctly under Article 2 than under Article 9.

M. BOOTH. — I think we are all agreed on that point.

M. F. C. AUTRAN (Marseille). — Je crois que l'observation de M. Le Jeune est parfaitement juste, mais je me permets de croire qu'elle trouvera mieux son application à l'article 9. En France, en effet, il y a une disposition analogue à celle que nous voulons insérer dans l'avant-projet.

Par conséquent, si vous ajoutez que le propriétaire de navire n'est pas obligé d'enlever l'épave quelle que soit la situation dans laquelle elle se trouve, il me semble qu'il vaudrait mieux dire à l'article **9** que « *les dispositions de* » *cet article s'appliquent également aux voies navigables, qu'il* » *y ait ou non faute du capitaine et quel que soit l'endroit ou* » *le navire se trouve* ».

Cela pourra comprendre également le cas d'un navire faisant une brêche dans la digue d'un canal.

M. LOUIS FRANCK (Anvers). — Puisque nous sommes d'accord sur le principe, il est inutile d'insister sur ce point.

Quand vous aurez à faire admettre cet avant-projet par les Gouvernements qui actuellement n'ont pas la limite de l'abandon pour le rélèvement de l'épave, vous aurez une bataille à livrer.

Or, si vous mettez déjà à l'article 2 que le dommage est couvert par la responsabilité limitée, vous les engagez logiquement à s'incliner quant à l'obligation d'enlever l'épave.

Pour le reste, comme nous sommes d'accord sur le principe, je pense que nous pouvons nous rallier à la rédaction :

« *aux digues, quais, voies navigables ou autres objets fixes* » *ou mobiles* ».

L'amendement de M. Leclercq et de M. Galibourg est acceptable.

ARTICLE III.

Le fret visé à l'art. 2 est le loyer ou le fret revenant au propriétaire de navire sans déduction, qu'il s'agisse de fret ou de loyer payé d'avance, de fret ou de loyer encore dû ou de fret ou de loyer acquis à tout événement.

Le prix du passage est assimilé au fret.

Les accessoires visés à l'art. 2 sont :

1° Les indemnités dues au pro-

« The freight mentioned in Article 2 is the hire or freight coming to the owner of the vessel » without deduction, whether the » question arises in reference to » freight or hire paid in advance, » to freight or hire already due, » or to freight or hire payable in » any event.

» Passage money is in the same » position as freight.

» The accessories mentioned in » Article 2 are :

» 1° Contributions due to the

priétaire de navire pour avaries communes, en tant que celles-ci constituent des dommages matériels subis par le navire et non réparés ;

2° les indemnités dues pour réparation de dommages quelconques subis par le navire ;

3° les sommes revenant au propriétaire du navire pour assistance ou sauvetage.

Ne sont pas considérées comme des accessoires du navire, les indemnités dues ou payées en vertu de contrats d'assurance, ni les primes, subventions ou autres subsides nationaux.

» owner of the vessel for general » average losses in so far as such » losses constitute material damage sustained by the vessel but » not yet repaired ;

» 2° Damages due for the repair » of any injury sustained by the » vessel ;

» 3° Sums of money coming to » the shipowner for salvage.

» Money due or payable in respect of contracts of insurance, » premiums, subvention or other » national subsidies shall not be » considered accessories of the » vessel ».

M. MARGHIERI (*président*). — Je pense que nous pouvons nous en tenir au premier paragraphe. La parole est à M. Verneaux.

M. RÉNÉ VERNEAUX. (Paris). — Messieurs, l'article 3 a pour objet de définir le fret à comprendre dans le patrimoine de mer qui forme la limite de la responsabilité. La commission de Paris a cru devoir adopter le texte qui vous a été lu et qui dit que ce fret est le fret sans déduction. Ainsi, la Commission de Paris s'est écarté considérablement tant des résolutions antérieures du Comité Maritime International qui dans ses conférences de Hambourg, d'Amsterdam et de Liverpool avait adopté le principe de la déduction des charges de navigation.

L'amendement que je propose, d'accord avec mes collègues, M.M. Denisse et Galibourg, tend a rétablir précisément dans ce paragraphe I les mots qui y ont été supprimés par la Commission de Paris et d'adopter

encore une fois le principe de la déduction des charges de navigation.

Je n'ai point trouvé dans le rapport présenté au nom de la Commission de Paris, des raisons suffisantes pour s'écarter des résolutions précédentes du Comité Maritime International.

La raison invoquée dans ce rapport, c'est que si on admettait le fret net, il faudrait des calculs compliqués pour la détermination de ce fret.

Mais, Messieurs, je crois que même en admettant le fret brut, on n'échappera pas à ces difficultés-là. Car aujourd'hui, la pratique des ristournes s'est généralisée. Or, je crois que même dans l'esprit des membres de la Commission qui ont rédigé ce rapport, il n'a pu être un instant question de supprimer la déduction de ces ristournes. Ce fait là seul donnera déjà naissance à des difficultés de calcul, puisque ces ristournes se rapportent souvent à l'ensemble du fret pour une année entière. Ainsi, la Commission de Paris n'évite pas le reproche de complication.

Au contraire, vous pouvez facilement échapper à cette difficulté par une évaluation à forfait des charges de navigation. Et je vous demande de fixer ce forfait à la moitié du fret brut.

Mon amendement, que vous trouverez exposé à la page 17 du second fascicule, est ainsi conçu :

« Le fret visé à l'article 2 s'entend du fret ou loyer
» brut ou du prix de passage proprement dit, même
» payés d'avance, sous déduction de.... (indication d'une
» quotité) comme représentation à forfait des charges qui
» leur sont propres. »

Je pense, Messieurs, qu'il est juste de déduire du fret les charges de navigation ; il ne s'agirait pas, bien entendu des amortissements ou des primes d'assurances, mais uniquement des charges proprement dites de la navigation.

A l'appui de cette opinion, je puis citer celle d'un homme qui a une grande autorité en ces matières et une grande influence : c'est M. Lyon-Caen, qui estime que dans le patrimoine de mer, il ne faut pas comprendre le fret brut, mais seulement le fret net.

Je me borne à ces courtes explications, et je demande à la conférence de bien vouloir revenir à ses résolutions antérieures au sujet de cette question de principe, et de fixer ce forfait rentrant dans le patrimoine de mer à la moitié du fret brut.

(*Verbal translation by* M. Louis Franck).

The proposal made by M. Verneaux is on page 17 of the French Report. The suggestion is that instead of abandoning the gross freight, deductions should be allowed for charges and so on; and, instead of having in each case an account to be drawn up of what the charges are, there should be a general rule putting in an absolute way and according to law that those charges are to be estimated at one half of the freight — the practical conclusion being that, instead of giving up the full gross freight, you should give up half of the gross freight.

(*M. Marghieri quitte le fauteuil*).
(*M. Marghieri vacates the chair*).

PRÉSIDENCE DE M. F. C. AUTRAN
Mr. F. C. AUTRAN IN THE CHAIR

M. Booth (Liverpool). — M. President and gentlemen, it has appeared to th Liverpool Shipowners Association and it certainly appe : so to me, that this Article should be allowed to stand as drafted by the Paris Commission. We cannot see that there is any reason why the shipowner's liability should be diminished by any deduction from the gross freight. To start with there is the difficulty of making and calculating the exact deduction; and, to meet that difficulty, it is proposed that a fixed proportion should

be taken, say a half. There is no logic in that at all and I do not think English shipowners would care to ask that their liability should be limited in that way. As a matter of fact, the shipowner, if he chooses (and very frequently he does so) to insure his freight, can insure his freight and when he insures his freight it is his gross freight, and, therefore, he can protect himself perfectly easily for the definite figure of his liability. With regard to the question of returns or rebates, I have taken it that the meaning of this Article, as it stands « the hire or freight coming to the owner of the vessel », is not intended to include the returns or rebates : in other words, that the shipowner would be allowed to deduct the return which is an absolute liability attaching to the freight which he will have to meet.

(*Traduction orale par* M. BETOCCHI).

M. Booth dit que les armateurs anglais ne veulent pas demander que l'on comprenne seulement la moitié du fret dans le patrimoine de mer ; ils ne veulent pas demander au Gouvernement de diminuer leur responsabilité en diminuant le fret brut de moitié. Ils pensent qu'il est juste qu'ils abandonnent le fret brut. Seulement, il pense qu'en ce qui concerne les ristournes, ce ne sont point des charges de navigation mais vraiment une déduction obligatoire sur le montant du fret brut. Il croit donc qu'il faudrait dire que le fret brut est le fret après déduction des ristournes. C'est d'ailleurs là le fret qu'ils touchent eux-mêmes.

M. LOUIS FRANCK. — C'est d'ailleurs le sens du texte sur la responsabilité des propriétaires de navires. Le propriétaire ne touchant le fret que sous cette déduction, il est bien certain que les ristournes peuvent être déduites.

M. HINDENBURG (Copenhague). — Messieurs, je suis chargé par l'Association danoise de faire connaître à l'honorable assemblée ici la manière dont nous envisageons les articles dont s'agit.

Nous avons été parfaitement d'accord sur l'article 2.

Quant à l'article 3, nous nous sommes inspirés des sentiments qu'à exprimés notre honorable président, en disant qu'il ne fallait pas viser à ce qui était absolument juste, mais qu'il faudrait se contenter de ce qui concilie les divers systèmes, pourvu qu'un accord puisse se faire.

L'Association danoise a eu de grandes craintes au sujet de cet article, et je me permettrai de vous faire connaître quelques-unes des observations qui ont été faites au sein de notre Association.

Dans l'article 2, nous lisons que le propriétaire de navire doit être responsable avec son navire et le fret du voyage. Il s'en suit selon nous, que le créancier du navire est suffisamment garanti, doit être censé suffisamment garanti quand on lui assure la valeur du navire et le fret du voyage.

Cela est tout simple dans le cas où le propriétaire est lui-même gérant du navire : alors il n'y a aucune difficulté. Mais ceci aussi doit être assuré au créancier du navire. Il doit être sûr de toucher la valeur du navire et le montant du fret du voyage. Sous ce rapport, on s'est écarté de la théorie de la fortune de mer. Evidemment quand le propriétaire a touché le fret — que celui-ci est acquis à tout événement, alors ce fret cesse de faire partie de sa fortune de mer. Néanmoins, par exception à cette règle, on dit que le créancier du navire doit être garanti par ce fret. Le contrat conclu entre le propriétaire et le chargeur, et stipulant que le fret sera payé d'avance, doit être considéré, à l'égard du créancier du navire, comme une *res inter alios acta*, qui ne doit pas nuire au créancier du navire.

Cela est selon nous, le système vrai. Le créancier du navire ne doit pas être lésé par suite de pareille circonstance. Les droits ne doivent pas être diminués par le contrat du propriétaire.

D'autre part, il est encore une règle que ces droits du

créancier, s'ils ne doivent pas être diminués ne doivent pas davantage être augmentés.

Les propriétaires de navires ont leurs contracts d'assurances ; ils touchent l'assurance ; mais cela ne regarde pas le créancier du navire : c'est, quant à lui, *rest inter alios acta.*

Il nous a paru qu'il fallaît abandonner ce système dans le cas où le propriétaire ne gère pas lui-même un navire mais où il le loue, par ce qu'on appelle *un time-charter.* Dans ce cas, le propriétaire fait un contrat avec le locataire et ce dernier a la gestion du navire et touche le fret.

Maintenant, ce qui nous choque dans l'article 3, c'est qu'on assimile le loyer et le fret, qui sont cependant essentiellement différents.

Le fret, c'est la rémunération que paie le commerçant pour le transport de sa marchandise ; il doit être assuré à tout évènement, sans avoir égard à la manière dont contracte le propriétaire. Si maintenant on trouve que cela est juste, comment envisager la chose quand le propriétaire a loué son navire à d'autres personnes ? Le locataire touche le fret, et quand la marchandise arrive à destination endommagée par le fait du capitaine alors c'est le locataire dans beaucoup de cas, qui doit en supporter la perte. Il supporte la perte par compensation. Le destinataire qui doit recevoir la marchandise doit payer £ 10,000 ; il y a dommage pour £ 5,000 ; il se fera payer par compensation. C'est donc le locataire du navire qui supporte ces pertes. Rien de plus juste, car « *Ex qua persona quis lucrum capit ejus factum prœitare debet.* Quant au propriétaire, c'est différent ; le propriétaire du navire assure son fret. Or, quand il loue son navire, il dit : je ne veux pas courir le risque de gérer ce navire ; Monsieur un tel va me payer une somme fixée pour l'usage de mon navire ; je me contenterai de très peu pour être sûr que ce Monsieur, s'il a

les profits, aura aussi les risques. Or, en disant ce que l'on dit à l'article 3, nous pensons que cela n'est pas strictement juste. Le contrat du propriétaire est une *rest inter alios acta* quant au créancier du navire. Le créancier doit en tout cas être assuré de la valeur du navire et du montant du fret du voyage, que ce fret soit encaissé par le propriétaire ou par le locataire qui a l'usage du navire. Mais quand le créancier du navire est assuré du fret, pourquoi lui donner en outre...

M. LOUIS FRANCK. — Ce n'est pas là l'idée : c'est l'un ou l'autre. C'est le fret quand c'est l'armateur qui exploite lui-même le navire ; mais lorsqu'il loue son navire en time-charter, c'est le prix lui revenant.

M. HINDENBURG, (Copenhague). — Je dis encore, et je m'inspire de ce qu'a dit notre honorable président, c'est qu'il peut se faire donc que cela ne soit pas juste ou équitable.

Je présente simplement ces observations à la conférence pour que l'on en tienne compte, si possible. Evidemment, nous n'allons pas voter contre le projet si l'accord peut se faire, parce que si le projet de la commission doit rallier tous les suffrages, nous ne voulons pas être en désaccord ; nous pensons qu'il serait avant tout important d'arriver à un accord.

M. FIAMBERTI. — Ho seguito con molto attenzione le osservazioni che sono state fatte dal signor Hindenburg. Mi permetto peró far presente alta saggezza di questa assemblea, che le difficoltá accennate dal precedente oratore rientrano nell' ambito delle difficoltá pratiche. Sono questioni *d'espèce* le quali sono riservate alla decisione dei magistrati dei singoli Stati.

Il nolo dei passeggieri deve essere compreso. Al giudice il vedere se sia logico (io credo di no) comprendere il nolo dei passeggieri nei rapporti colle merci, mentre pei passeggieri vi è esclusione della limitazione di responsabilitá.

Permettesemi poi un' osservazione generale, che credo sará divisa da tutti voi. E un supremo interesse che un primo passo pratico si faccia sulla unificazione internazionale del diritto marittimo. Io ammetto che delle imperfezioni, e se volete, delle lacune anche gravi si possano trovare nell' avant-projet, che è il risultato di studi profondi di uomini eminenti che da ogni parte del mondo hanno portato il desiderio della classe marittima di vedere tolti gl'inconvenienti gravissimi che tuttora si frappongono all' esercizio della loro industria, stante il conflitto quotidiano delle diverse leggi.

Dunque se non avremo una cosa perfetta, faremo un primo passo su questo cammino di vera civiltà, di vero benessere per tutti.

(*Traduction*)

J'ai suivi avec beaucoup d'attention les observations qui ont été présentées par M. Hindenburg. Je me permets cependant d'appeler l'attention de l'assemblée sur cette considération que les difficultés signalées par le précédent orateur, rentrent dans la série des difficultes pratiques. Ce sont des questions « d'espèces » qui doivent être tranchées par les magistrats des divers États.

Le prix de passages doit être compris. Au juge de voir s'il est logique — (je ne le crois pas) — de comprendre les prix de passage dans les limites de responsabilité lorsqu'il s'agit de créances de la cargaison, alors que pour les passagers aucune limitation de responsabilité n'est fixée.

Permettez-moi de faire ensuite une observation générale qui, je crois, aura l'approbation de vous tous. Il est de toute importance qu'un premier pas soit fait pratiquement vers l'unification internationale du droit maritime. J'admets que dans l'avant-projet tel qu'il

nous est soumis, il y a des imperfections, si vous voulez, des lacunes. Mais ce projet est le résultat d'études profondes d'hommes éminents venus de toutes les parties du monde, animés du désir de mettre fin aux graves inconvénients qui constituent un obstacle de tous les instants à l'exercice de leur industrie, c'est-à-dire, le conflit quotidien des diverses lois.

En admettant donc que nous n'aurons pas une loi parfaite du coup, au moins nous ferons un pas en avant sur le chemin de l'unification.

M. AUTRAN, (*président*). — Mais, mon cher collègue, à l'heure actuelle, la question doit se poser bien nette. Êtes-vous partisan du fret brut ou du fret net ? C'est la question sur laquelle il nous conviendrait de connaître votre opinion.

M. FIAMBERTI. — J'y viens de suite, Monsieur le Président. C'est le fret revenant au propriétaire, sans déduction. Mon opinion est d'approuver le projet comme il est. Je pense que M. le Président n'a peut-être pas bien suivi mon raisonnement...

M. AUTRAN, (*président*). — Je vous ai suivi avec la plus grande attention, mais je crois inutile d'entrer dans des discussions particulières ; il s'agit simplement d'arrêter les principes généraux.

M. FIAMBERTI. — Io credo che sia opportuno sentire la voce del Bureau internazionale. All'art. 3, ultima parte, l'avant-projet esclude del patrimonio la indemnità di assicurazione. Ed io faccio gran plauso a questo principio, ma mi demando nel contempo : Che cosa ha inteso con questo di fare il Comitato ? Ha inteso di risolvere la questione che si è presentata e che si presenta tuttora, fra l'*abandon* ed il *délaissement ?*

Un piroscafo subisce un' avaria. È assicurato. L'armatore ne fa l'abbandono al suo assicurato e ne ha diritto. I

creditori non possono impedirglielo. Egli prende il prezzo di assicurazione ma deve consegnare il piroscafo e il nolo. C'era *délaissement*, rapporti con terzo creditore. L'armatore il quale ha fatto il *délaissement* al suo assicuratore, può anche validamente essere ammesso nel diritto di abbandonare ai creditori ? Ecco la questione.

M. AUTRAN, *président*. — Je prie les orateurs de se limiter à la discussion des seuls paragraphes que nous examinons. Nous avons entendu M. Fiamberti avec beaucoup d'attention, mais il m'a paru s'écarter un peu de la question du fret brut ou fret net. Nous ne traitons pas ici une question de droit d'assurance; nous traitons une question de responsabilité de propriétaires de navires. Si un armateur fait un délaissement à ses assureurs, il transfère la propriété du navire aux assureurs avec toutes les charges qui le grèvent. Mais je le répète, je ne veux pas ouvrir la porte à cette discussion. La seule question dont nous ayons à nous occuper est celle de savoir si on comprendra dans l'abandon le fret net ou le fret brut, et dans le cas où vous décideriez que c'est le fret brut qu'il faut abandonner, convient-il de faire certaines déductions sur le fret brut ?

M. JACQ. LANGLOIS (Anvers). Je suis grand partisan, Messieurs, de réduire le fret, par une convention quelconque, à la moitié. Mais la question qui me préoccupe en ce moment est de savoir quel est le fret que nous allons prendre. Vous avez le fret ou le loyer. Vous confondez les deux, et qui décidera si c'est le loyer? Je proposerais, pour couper court à toute discussion, de dire que lorsqu'il y aura une marchandise à bord, c'est le fret qui est visé. Du moment que le navire est sur lest, il n'y a que le loyer.

M. Ant. Vio. — L'articolo in questione mi suggerisce la domanda : Quale nolo debba essere abbandonato dall' armatore ai creditori della nave, se cioè il nolo brutto, oppure il solo nolo netto.

Secondo il tenore dell' art. 13, se io ho ben compreso, si proporrebbe che l'armatore dovesse lasciare ai creditori il nolo brutto. Ora nella seduta della commissione ungherese, molti armatori hanno espresso il loro timore contro una simile statuizione di questo nolo brutto. E stato da loro detto nella maggior parte dei casi : il nolo brutto è cosi minimo che viene assorbito dalle spese del viaggio. Ora sarebbe ingiusto per l'armatore di dover restituire ai creditori il nolo brutto, mentre di questo nolo non gli è rimasto quasi nulla. D'altro causo è stato preso in considerazione l'argomento addetto della commissione di Parigi che cioè sarebbe molto difficile di rilevare il nolo netto, cioè di trovare il conto preciso del nolo netto.

La commissione ungherese ha cercato il modo di trovare una formula che potesse togliere questa difficoltà, e crede di averla trovata in questo senso : « si ammette, in generale, che l'armatore debba abbándonare ai creditori l'intero nolo ; però se l'armartore può provare che il nolo netto da lui ricevuto è molto minore, od è minore al nolo preteso dal creditore, egli non è in dovere di rifondere che il nolo da lui realmente incassato quale nolo netto ».

Con ciò viene evitata la difficoltà del calcolo. Il creditore che si fa attore, domanda l'intero nolo brutto ; però l'armatore può in corso di causa comprovare che il nolo che gli è rimasto è minore del nolo preteso dall' attore, e che pertanto egli non è in dovere di pagare che il nolo netto che gli è rimasto dopo il diffalco delle spese avute.

Quindi, in nome dell' associazione ungherese ho l'onore di proporre un emendamento, nel senso cioè che dopo il

primo alinea venga aggiunta questa clausola : « *Le fret* » *visé à l'article 2 est généralement le loyer... etc.* ».

« *Au cas cependant où le propriétaire du navire prouve de* » *combien le fret ou le loyer net était moindre que la somme* » *exigée par le créancier, il ne sera tenu que jusqu'à concur-* » *rence de cette somme* ».

(Dans les accessoires du navire, il faudrait comprendre : le produit des bateaux de pêche, des remorqueurs, des garde-port, des bateaux-pilote, etc.).

(*Verbal translation by* M. Betocchi.)

Dr. Vio has just said that the Hungarian Committee rather feared that the term « brut freight » would create a difficulty; because in several cases the brut freigt is slight and scarcely means anything to the shipowner after having paid expenses And they propose an amendment to the effect that the freight dealt with in Article 2 is in law the gross freight but where the shipowner can prove that the freight is under the amount claimed by the creditor — in that case he will only be held to be liable to the amount of that sum.

M. Louis Franck. — If I may explain it, the idea of Dr. Vio is this — that the liability should be on the « net freight »; but he understands that there is a real difficulty at present under that principle, or rather if that principle should apply, in that there might be endless litigation about which charges are to be deducted from the gross freight in order to arrive at the net freight. He suggests therefore that, that in order to meet that criticism, it should be stated as a matter of law that, as a rule, the owner has to abandon the gross freight, but that if he can prove to the satisfaction of the Court the amount of charges and disbursements he has had to make, he will be entitled to deduct the same and only be liable on the balance remaining after such deduction. And he has proposed an amendment to that effect.

M. le Dr. CRUZ (Buenos-Aires). — Je demande la parole pour soutenir l'avant-projet dans la forme proposée à l'assemblée, c'est à dire pour combattre l'amendement proposé par la France. Je crois que s'il y a plus de justice à adopter le fret net à certains égards, le fret brut donne un moyen plus pratique de résoudre la question. Ce principe du fret brut est inséré aussi dans le droit de la République Argentine.

Je crois que ces messieurs qui ont proposé l'amendement au nom de la délégation française doivent tenir compte de ce que la responsabilité est dès aujourd'hui limitée à forfait par le criterium anglais à £ 8 à la tonne. C'est un principe plus pratique.

L'observation du Dr. Vio est certainement digne de notre attention, mais si l'on adoptait ses conclusions, cela donnerait lieu à un procès dans chaque cas, et ce que nous devons tâcher d'éviter, c'est précisément cela.

Nous pouvons laisser de côté le principe de la justice absolue pour arriver à un résultat pratique.

Puis comment déterminer ce fret brut ? Le criterium peut changer de pays à pays et on interpréterait cette disposition de façons diverses. Mais tout en acceptant le projet dans ce qu'il y a de fondamental, je considère que la première partie peut donner lieu à des malentendus. Dans les termes « loyer ou fret », à mon avis, il y a mauvaise rédaction. Le loyer du bateau peut venir s'ajouter au fret. Et pour les nations où cela est le cas, cela peut donner lieu à confusion. Je crois qu'il vaudrait mieux de rédiger l'article comme suit :

« *Le fret visé à l'article 2 est considéré sans aucune distinction, qu'il s'agisse de fret ou de loyer.* »

Dans les mots « revenant au propriétaire », il y a malentendu encore ; on ne précise pas suffisamment. C'est à dire,

est-ce avant d'avoir payé la manutention, etc. ou après avoir effectué le voyage ?

Je crois qu'on doit prendre pour cela le fret sans aucune déduction, et je propose cet amendement au nom de la délégation argentine.

(*Verbal translation by* Mr. LESLIE SCOTT)

Dr. Cruz has just pointed out in answer to the suggestion of some of the Delegates to-day that the limitation under the system of abandonment should be further cut down by limiting the freight to the net freight ; that the Code already provides for a very substantial reduction by giving the option of the English limitation of £ 8 a ton ; and that the shipowners ought not to expect to get it both ways. If they are getting the £ 8 a ton reduction on the one hand, they ought not to expect a further reduction in their right of abandonment. He then, in addition, proposed as a question of drafting on the first part of Article 3 that the words. « Le fret visé à l'art. 2 est le loyer ou le fret revenant au propriétaire de navire sans déduction, etc. », should be replaced by the following words : « Le fret visé à l'art. 2 est le loyer ou le fret sans aucune déduction, etc. » — leaving out the words, « revenant au propriétaire de navire », which he says may lead to ambiguity as to the possible meaning of « net freight ».

Sir WILLIAM PICKFORD. — Perhaps I may be allowed to say on behalf of the English Delegates, who represent practically the whole of the English shipowners, that they are prepared to support, and wish to support the Article as it now stands ; and agree, in fact, almost in terms with what has been said by Dr. Cruz. No doubt, in taking the gross freight instead of the net freight the shipowners are giving a larger liability. I may say that practically from the point of view of our Government they are more likely to regard with favour a Treaty which does not seem in every direction to tend in favour of a greater limitation of the shipowner's liability. And the shipowners of England do not wish that the treaty should bear that aspect or should have that effect. Looking at the thing as a matter

of justice and as a practical matter, they support the clause as it now stands, and they would wish that the freight should be the gross freight; and, in coming to that conclusion they are, of course, influenced by what has been very clearly pointed out by Dr. Cruz, that, in the alternative limitation of £ 8 a ton, they do get an advantage. Taking the one with the other, they are of opinion that the Article, as now drafted, is a just and proper Article and wish to support it.

(*Traduction orale par* M. LOUIS FRANCK).

M. Pickford a dit qu'au nom de la délégation anglaise laquelle peut être considérée comme comprenant à peu près tout l'armement anglais, il propose de voter le texte tel qu'il est proposé.

En ce qui concerne la question du fret brut ou net, les armateurs ne désirent pas que le traité ait l'apparence de leur donner des faveurs plus grandes sous tous les rapports et ils sont d'accord pour accepter la nécessité d'abandonner le fret brut. Ils font observer que les continentaux obtiennent le bénéfice des £ 8 et que les Anglais obtiennent la faculté de l'abandon; dans ces circonstances, il est d'avis qu'ils n'ont pas besoin d'autres faveurs.

M. GERTSCHER. — Io devo soltanto rendervi noto il criterio che ha presieduto alle deliberazioni tanto dell' Associazione Marittima austriaca, quanto dell' Associazione degli armatori.

La nostra associazione ha voluto sapere quali erano le opinioni degli armatori a tal proposito, e li ha consultati. E tutti sono arrivati alla conclusione, che si dovrebbe comprendere nell' abbandono il nolo netto, non il nolo brutto.

Non mi pare necessario dire le ragioni, che pono state chiaramente esposte dal delegato del Belgio : Io credo sia giusto che l'armatore dovendo corrispondere qualche cosa in seguito alla sua responsabilitá, non debba però ris-

pondere di quanto ha giá speso; perchè se l'armatore aggiungesse a quel che gli resta del nolo antico quanto ha giá speso, egli ci perderebbe. È questione di giustizia, mi pare; e quindi si dovrebbe accettare la decisione che venne presa nella conferenza di Liverpool ed anche anteriormente, cioè quella che non comprende nell' abbandono che il nolo netto.

La commissione non è stata incaricata neppure di sostituire al nolo netto il nolo lordo; soltanto si raccomandò alla commissione di precisare meglio il nolo netto. Convengo che ci protranno essere delle difficoltà nel calcolo di tale nolo, ma io credo che i giudici, le Corti, che saranno incaricate di risolvere la questione, troveranno una facile soluzione. La nostra legge procedurale austriaca dice, per esempio, che il giudice deve con un certo criterio di equitá risolvere il litigio.

Ritengo, dunque, che la questione non potrebbe venir risolta nel modo proposto dal Comitato, ma che si dovrebbe stare ligi alla decisione della conferenza di Liverpool.

* * *

Je veux seulement dire qu'à la Conférence de Liverpool, il a été résolu de laisser à la Commission de Paris de donner la définition des mots « fret net » ou « fret brut »; mais la Commission de Paris n'a pas été chargée de déterminer si au lieu du fret brut, ce sera le fret net qui doit être compris dans l'abandon.

Pour justifier cette opinion exprimée, je veux dire simplement qu'il ne serait pas juste d'imposer au propriétaire du navire le payement du fret brut ou du fret net entier, puisqu'il a déjà dû dépenser une grande partie de ce fret, brut ou net, reçu ou non reçu. De sorte que s'il doit

abandonner le fret en entier, il devrait donc payer, outre le fret qu'il lui reste encore, une somme déjà dépensée.

M. AUTRAN (président). — Je vais donner la parole à M. Berlingieri, et comme c'est le dernier orateur inscrit, je me propose de mettre ensuite aux voix la proposition de M. Verneaux.

M. BERLINGHIERI. — Voglio dire soltanto due parole per difendere l'operato della commissione di Parigi.

A me pare che la proposta di tale commissione debba essere votata tale e quale è, perchè risponde ad un concetto di pratica utilità.

Si tratta di vedere se debba essere compreso nell' abbandono il nolo brutto od il nolo netto.

Ora quando un armatore, proprietario di navi, si dà all' esercizio della navigazione, deve esporre ai rischi del mare anche le spese che sono necessarie per la spedizione e per guadagnare il nolo. Questo *quid* entra nella sua fortuna di mare. È giustizia, quindi, secondo i principii del diritto marittimo, che nell' abbandono sia compreso anche tutto quello che riguarda la fortuna di mare del proprietario, cioè le cose che sono esposte al rischio della navigazione.

Questo sistema risponde ad un concetto di pratica utilità, perche ci rispermia d'indagare quale sia il nolo netto e lordo, e quali spese debbano essere soltratte per avere il nolo netto.

Sarà pertanto opera saggia il votare la proposizione formulata dalla commissione di Parigi, rispondendo essa ad un concetto di pratica utilità e di giustizia.

(*Traduction orale par* M. LOUIS FRANCK).

M. Berlingieri est d'avis qu'il y a lieu de voter le texte de la commission de Paris, c'est-à-dire d'adopter le fret brut.

Cela, pour des raisons de justice et des raisons pratiques.

La fortune de mer est la base de l'abandon. Or, les débours de l'armateur sont compris dans la fortune de mer. S'il perd son navire, il perd également ses débours. Voilà la raison de justice.

Quant aux raisons pratiques, c'est qu'avec le système du fret brut, vous supprimez tous les litiges qui pourraient naître sur la question de savoir quels sont les débours qu'il faut déduire sur le fret brut pour obtenir le fret net.

M. AUTRAN (président). — Je crois que la question est épuisée et qu'il faut passer au vote.

La question se pose ainsi : faut-il comprendre dans l'abandon le fret brut ou le fret net?

Pour vous dire mon sentiment personnel. Nous avons, dans la Commission de Paris, admis le fret brut pour deux raisons que nous avons fait valoir, savoir : que les avances sur le fret sont des capitaux exposés aux risques de la navigation et qu'on peut assurer ces risques. D'autre part, il faudrait des procès dans chaque cas. Cela serait évidemment avantageux pour les avocats, mais non pour les plaideurs.

Je vais donc mettre aux voix l'amendement de M. Verneaux.

M. le Dr. GIOV. MARTINOLICH (Trieste). — Noi, della Società austriaca, siamo per l'abbandono del nolo netto e crediamo che i due argomenti che sono stati dedotti da qualche parte e che, secondo il presidente, hanno avuto influenza sulla commissione di Parigi, non siano giusti.

Il primo argomento è quello della giustizia. Si dice che la giustizia sta per l'abbandono del nolo brutto, perchè le spese che l'armatore ha fatto, fanno parte della sua fortuna di mare ; e siccome deve abbandonare la sua fortuna, è giusto che debba abbandonare queste spese. Ma egli già falte queste spese ; ha già perduto i suoi denari, per quanto facciano parte della sua fortuna di mare. Io credo

che secondo giustizia egli dovrebbe pagare il nolo netto e non pagare una secondo volta quello che ha già speso.

In quanto al secondo punto, che cioè la commissione di Parigi sarebbe stata in imbarazzo per stabilire la quota netta da abbandonarsi, e che i Tribunali protrebbero pure trovarsi in imbarazzo, io credo che sia mettere avanti la comodità alla giustizia ; in altre parole sacrificare la giustizia alla comodità. Ma anche a questo si può rimediare. Abbiamo altri casi in cui non potendo stabilire l'indennizzo voluto dalla natura del contratto, si prende una somma *à forfait*. Invece di pagere un' indemnità qualunque, si paghi metà del nolo, perchè la pratica c' insegna che su per giù quello che resta all' armatore è quasi la metà. Ed anche in questo caso, invece di dar luogo ai litigi che la commissione ha temuto, si può stabilire una somma a *forfait* : il terzo oppure la metà.

Credo che questa via di uscita sarebbe la più conveniente.

Concludendo, ripeto che noi della commissione austriaca siamo per l'abbandono del nolo netto.

(*Traduction orale par* M. Louis Franck).

L'honorable M. Martinolich a dit :

Au point de vue de la justice, il ne faut pas que l'abandon soit l'abandon du fret brut, car l'armateur a des débours avant même d'encaisser le fret. Si vous le forcez donc à abandonner le fret brut, il devra suppléer de sa poche les sommes qu'il a déboursées pour le navire.

Au point de vue pratique, ce n'est pas parce que la preuve peut être difficile, qu'il faut écarter le fret net. On peut d'ailleurs l'établir à forfait en déduisant une proportion fixe du fret brut. Telles sont en résumé les remarques présentées par M. Martinolich.

Je vais maintenant vous lire l'amendement de M. Verneaux :

« Le fret visé à l'article 2 s'entend du fret ou loyer brut, sous déduction de la moitié, comme représentant à forfait les charges qui leur sont propres. »

« The freight mentioned in article 2 is the gross freight or hire, under deduction of half its amount, which half is considered as representing the charges which are proper to same. »

Comme vous l'entendez, M. Verneaux propose de substituer au fret brut la moitié de ce fret brut. La question de savoir quel sera ce fret, est réservée. Nous ne votons que sur ce seul point : Le fret, quel qu'il soit, celui de la charte-partie ou du connaissement, sera-t-il le fret brut ou la moitié du fret brut.

Ceux qui sont d'avis que ce sera le fret brut voteront « non ». Ceux qui veulent adopter l'amendement de M. Verneaux voteront « oui ».

(Seules l'Autriche, la France et la Hongrie votent « oui » ; toutes les autres pays votent « non ».

L'amendement est rejeté. — The amendment is lost.

La séance est suspendue. — The conference adjourned.

SÉANCE DE L'APRÈS-MIDI
AFTERNOON'S SITTING

PRÉSIDENCE DE M. AUTRAN
MR. F. C. AUTRAN IN THE CHAIR

M. BRADFORD (United-States). — I desire to offer an amendment to Article 3, and the amendment I propose is intended to make the Article reads as follows: « The freight mentioned in Article 2 is the freight for the voyage paid or payable by cargo without deduction, whether the question arises in reference to freight paid in advance, to

freight already due, or to freight payable in any event ». The amendment further makes paragraphs 1, 2 and 3 read as follows : N° 1, after the word « contributions » insert the words « paid or » and make it read as follows : « Contributions paid or due to the owner of the vessel for general average losses in so far as such losses constitute material damage sustained by the vessel » — omitting the words « but not yet repaired ». Then, as to n° 2, « Damages collected or due for the repair of any injury sustained by the vessel during the voyage ». Then as to n° 3, « Sums of money paid » (insert the words « or due ») « to the shipowner for salvage services rendered on the voyage ». My colleague Mr. Brown and I, representing the Maritime Law Association of the United States, beg leave to submit this amendment as a proper amendment. We can see no reason why a distinction should be drawn between contributions due to the owner of the vessel and contributions paid to the owner of the vessel. It seems to us that if the one item is to be included within the limited liability the other item ought to be included within the limited liability; and certainly that is the law as administered in the United States. Not to take up the time of the Conference unnecessarily, I may add that the same remark applies to n° 2, the change being from « damages due » to « damages collected or due ». We can perceive no reason for any distinction there. If the damages have been collected, they surely should form an item within the limited liability, just as well as damages due and not collected. We think that it is eminently proper and we submit it to you for your consideration that the damages collected or due for the repair of any injury sustained by any vessel should be restricted by the words « during the voyage ». It does not mean during any indefinite anterior time, but during the voyage.

I think I have now said all that seems to me to be material in support of Nos. 1, 2 and 3. With respect to the amendment in relation to the first part of the Article, it seems to us to be very desirable that it should be made : it will introduce an element of certainty in place of uncertainty, and will approximate as closely to the attainment of justice as is possible under the circumstances. I hardly think that it is necessary for me to elaborate the reasons which have induced the Delegates to take this view; but it does seem to us that the freight should be the freight on the cargo — the bill of lading freight — and that too, whether the vessel has been chartered or has not been chartered. If the vessel has been chartered and the money has been paid to the charterer, it may be said that it would be a hardship upon the shipowner to include that within the limitation of liability. But is it so? Is it not true that the shipowner under his contract of charter, on an average, is paid money which may represent approximately the freight which would otherwise be payable directly to him? So, looking at it from all sides, we respectfully submit this amendment to you for your consideration and approval. We have no question in our own minds after consultation and consideration that it would be wise to adopt the amendment.

Mr Leslie Scott. — Before you leave the Tribune may I, with the permission of the President, ask you two questions for the sake of clearing up a little doubt that seems left in my mind. You used the words, « The freight mentioned in Article 2 is the freight for the voyage » — do you deliberately exclude the words « or hire »?

Mr Judge Bradford. — Yes.

Mr Leslie Scott. — Do you intend, therefore, to exclude charter hire?

Mr JUDGE BRADFORD. — Yes.

Mr LESLIE SCOTT. — If the vessel is on charter hire and the owner of the vessel is held responsible for a collision you do not intend, by your amendment, the charter hire to be included in the value of the vessel?

Mr JUDGE BRADFORD. — No.

Mr LESLIE SCOTT. — Whether cargo is on board or not?

Mr JUDGE BRADFORD. — This amendment relates to the freight payable to the cargo.

Mr LESLIE SCOTT. — And if no cargo is on board there is no freight included in the limit of the liability.

Mr JUDGE BRADFORD. — It is not included in this amendment.

Mr LESLIE SCOTT. — The other question is under subsection 2. Your suggestion is : « 2° Damages collected or due for the repair of any injury sustained by the vessel ».

Mr JUDGE BRADFORD. — During the voyage.

Mr LESLIE SCOTT. — During the voyage. If the damages have been collected and expended in repairing the vessel, do you intend that they should still be payable to the injured party, although the injured party has the increased value of the vessel in the repairs effected upon her.

Mr JUDGE BRADFORD. — Well, I will be perfectly frank with you, and, in answer to your last suggestion, I will say that it might conceivably be well to add a proviso to No. 2 in order to meet the precise point which you have brought forward.

(*Traduction orale par* M. LESLIE SCOTT).

M. Bradford vient de proposer un amendement à l'article 3.

Il propose, au commencement de l'article, au lieu des mots « Le fret visé à l'article 2 est le loyer ou le fret revenant au propriétaire etc., » de dire : « Le fret visé à l'article 2 est le fret pour le voyage, payé ou payable pour la cargaison, sans déduction... etc. »

Le résultat de cette proposition serait d'exclure le loyer dans le cas de charte-partie, quand il n'y a pas de cargaison et aussi de faire payer le fret du connaissement dans le cas où il y a charte-partie et de la cargaison à bord.

Dans les alinéas qui suivent, il propose :

Au 1°, les indemnités payées ou dues, c'est-à-dire d'ajouter *payées ou dues*.

Au 2°, « *indemnités déjà encaissées ou dues,* » et d'ajouter à la fin de cet alinéa les mots « *pendant le voyage* ».

Au 3°, « *les sommes payées ou dues au propriétaire de navire* », au lieu du mot « revenant ».

Au lieu des mots « pour assistance ou sauvetage » de mettre : « *pour les services de sauvetage ou d'assistance rendus pendant le voyage* ».

M. AUTRAN, *président.* Je crois que l'amendement de M. Bradford peut être accueilli sur certains points.

En effet, sous le n° 1, je crois qu'il est utile d'ajouter « *payées ou dues* au propriétaire de navire pour avarie commune. » Par conséquent, il y aurait lieu de compléter le texte de la façon suggérée par M. Bradford.

Mais pour la fin du dernier paragraphe, je me permettrai de ne pas être tout à fait de son opinion, en ce sens que lorsque le propriétaire de navire a fait réparer le navire à ses propres frais — comme la question posée tantôt par M. Scott le faisait pressentir — il paraît injuste de faire en réalité payer deux fois cette réparation par le propriétaire, et ce n'est évidemment pas là ce que vous avez voulu dire.

M. LESLIE SCOTT. M. Bradford est d'accord sur ce point.

M. AUTRAN, *président.* En ce qui concerne le n° 2, je crois que la rédaction proposée par M. Bradford est également acceptable. « Damage collected or due for repairs or injury sustained by the vessel » : « Tous dommages récupérés ou dus pour les réparations et les avaries souffertes par le navire ».

J'admets également en ce qui me concerne personnellement, « les sommes d'argent payées ou dues au propriétaire de navire pour services de sauvetage ou d'assistance rendus pendant le voyage ». Cette formule précise en effet que c'est seulement cette indemnité de sauvetage qui peut être acquise au navire pendant le voyage qui doit être comprise dans l'abandon.

Sur ce point, je désire consulter la conférence pour voir si elle est d'accord sur la rédaction proposée par M. Bradford.

M. CHARLES LE JEUNE (Anvers). — Un seul mot pour signaler une légère omission.

De même que pour les avaries communes, on indique parmi les accessoires du navire, les avaries communes en tant qu'elles constituent des dommages subis par le navire et non réparés, il faut pour les « indemnités dues pour réparation de dommages quelconques subis par le navire », préciser au 2° de l'article 3 en ce qui concerne les dommages matériels qu'il s'agit des réparations non encore effectuées ».

M. AUTRAN, *président.* — C'est ce qui s'entend du reste. Dans une réunion comme la nôtre, où plusieurs langues se parlent, il est impossible de faire une rédaction qui soit absolument définitive. Laissez donc au Bureau Permanent le soin de mettre tout cela en ordre.

Reste une autre question : la plus importante.

Lorsque la Commission a indiqué dans son texte que le « fret visé à l'article 2 est le loyer ou le fret revenant au propriétaire de navire » nous avons entendu viser deux hypothèses absolument différentes.

Le fret est celui qui résulte du connaissement, c'est-à-dire quand le propriétaire exploite son navire lui-même et qu'il en encaisse le fret. Mais il arrive fréquemment qu'un propriétaire loue son navire et qu'il reçoit à raison de cette location (« time-charter ») un loyer. N'empêche que le capitaine de ce propriétaire reste toujours à bord, car il est très rare qu'on loue un navire nu et que le propriétaire ne conserve pas son mandataire à bord. Et dans ces conditions, si un fait dommageable quelconque vient à se produire pour des tiers, malgré que ce fait se soit produit pendant la durée de la location à un tiers, n'empêche que le propriétaire reste toujours responsable pour les faits de son préposé.

Nous avons apprécié, à la Commission de Paris, que dans l'abandon du navire, il fallait comprendre le fret, mais aussi le fret résultant de la location elle-même, et ce fret doit correspondre exclusivement à la période du voyage pendant lequel le fait dommageable s'est produit. Voilà la genèse de cet article. Je crois que lorsque j'ai ainsi expliqué avec plus de détails les raisons de cette disposition, nous serons d'accord pour admettre qu'il ne serait pas juste que le propriétaire, qui reçoit un bénéfice de cette location, ne fût pas tenu, en abandonnant le navire, d'abandonner en même temps le fruit civil du navire correspondant à la période pendant laquelle le fait dommageable se produit.

(*Translation by* Mr. Leslie Scott).

The President says that on the question of admitting Time Charter freight, the Paris Commission came to the conclusion that time charter

freight was just as much a fruit of the ship as bill of lading freight, and that therefore it ought to be treated *pari passu* and on the same footing as bill of lading freight. Any little difficulties as to working out the detail as to how the time charter hire, which is to be treated as part of the ship, shall be assessed, can be left to the Permanent Bureau ; but, as a matter of principle, he says the charter hire ought to be left in the same position as it was in Paris — to be abandoned in exactly the same manner as the bill of lading freight. The English Deputation, as far as I know, is agreed upon that point.

M. BROWN. — M. President and gentlemen, the first point of criticism that was directed against the amendment proposed by the American Deputation was that suggested by M. Leslie Scott, who says that if the owner were to collect sums in general average or by way of collision or other damages and were to invest those sums in the repair of the vessel it would be unjust that the owner should have to pay those sums twice. That doctrine has the hearty concurrence of my colleague and myself and it was not the purpose of our amendment to effect any different result and it would not effect any different result if the American proposals were accepted in toto, because you will remember, at the opening of the Conference, I proposed that the owner was to be credited in respect of the value of the repairs made during the voyage, and our proposition, as a consistent whole would not bring about the difficulty suggested by Mr. Leslie Scott. The reason that we have been compelled to make this amendment is that my former amendment has not yet been considered. As to the second criticism, the question, we confess, is a somewhat difficult one. It is one we have considered carefully and have concluded that on the whole it is wisest that the bill of lading freight, and not the charter freight, should be abandoned. In the first place it makes the law more harmonious; because, in regard to general average, it is

always bill-of-lading freight and not charter freight that is considered and upon which the adjustment is determined. The argument directed against that point of view is that the owner ought to be accountable for that which he has received — for the benefit he has derived from the voyage; and yet there are two sides always to this proposition. It is true the owner may have received a benefit, and yet the cargo may have paid a price for carriage; in that sense the cargo has invested something in the enterprise, and we think that sum should be given up, even though it has not found its way into the pocket of the owner. If it has not found its way into the pocket of the owner it is because of some private arrangement he has made with the charterers, and we think that the cargo owner ought not to be mulcted with that. Our principal objection, however, is a very practical one — and it is this — charters are made in all sorts of forms and plans. Many charters impose upon the charterer the obligation of paying all sorts of dues — tonnage dues, costs of coal, and even wages and profits of the crew; and that too, at times, when the charter gives to the owner the right of selection of the Master and crew. If the present proposals of the Committee find acceptance they will mean that an owner may always charter his vessel on terms that impose these burdens on a charterer; and thus, in fact, the owner, in the event of any disaster, will have the advantage of surrendering only the net freight and not the gross freight. And yet we have voted, by 8 countries to 3, that we should require the owner to surrender the gross freight and not the net freight : in other words, we are putting it in the power of the shipowner to defeat the whole of this Convention.

(Traduction orale par M. LOUIS FRANCK*).*

M. Brown a dit qu'à, son avis, qui est également celui de son collègue, le fret à abandonner doit être le fret du connaissement, et cela pour deux raisons :

La première raison, c'est que c'est la solution la plus simple, parce qu'il est aisé de s'assurer de ce qu'est ce fret.

La seconde raison, c'est que c'est la seule solution qui soit vraiment en harmonie avec les principes que la conférence a proclamés en matière de fret net. Il y a en effet, dit M. Brown, beaucoup de charte-parties qui mettent à la charge de l'affréteur une série de débours qui en réalité représentent la différence entre le fret brut et le fret net. Par conséquent, accepter qu'on puisse abandonner le fret de la charte-partie c'est permettre à l'armateur de s'arranger pour que le fret qu'il abandonne soit uniquement le fret net et non point le fret comprenant les débours.

M. LOUIS FRANCK. — S'il m'est parmis d'ajouter un mot, je dirai qu'il y a à la proposition de nos amis un obstacle. Qu'est-ce qu'ils font dans le cas d'un navire loué en time-charter et qui n'a pas de cargaison à bord parce que l'affréteur l'envoie sur lest; par exemple un navire est loué pour une année à un fret de £ 500 par mois. L'armateur l'emploie à aller prendre des cargaisons de blé au Danube et après l'avoir déchargé à Londres, il l'envoie à vide à la Baltique charger du bois pour avoir un fret de retour. Dans le voyage entre Londres et la Baltique, le navire entre en collision avec un autre bâtiment. Avec le système de nos amis américains, il n'y a pas de fret à abandonner, parce qu'il n'y a pas de cargaison à bord.

Le second point : Pourquoi obliger le propriétaire à abandonner le fret du connaissement? Ce n'est pas son fret. Je crois que pour être logique, il faut demander au propriétaire d'abandonner le navire avec le fruit qu'il produit, c'est-à-dire le loyer du navire lorsqu'il est loué en time-charter, le fret du connaissement si l'armateur exploite lui-même son navire.

Laissez-moi ajouter que la différence entre les deux systèmes ne vaut pas que nous nous y appliquions d'une façon aussi complète.

I will briefly sum up what I have said. The first point is this : If you take the bill-of-lading freight, what are you going to do with the ship on time charter, for which the owners get the freight, and which, temporarily, has no cargo on board because the man who has taken the ship has no cargo to give her and sends her in ballast to another port? The second point is : Why should you ask the shipowner to give you the bill-of-lading freight? It is not his — it belongs to the charterer. I think, on logical grounds, you must ask the shipowner to give you the ship with the fruit and benefit which she produces. That means, time-charter freight when it is time charter; bill-of-lading when it is bill-of-lading freight.

Mr Leslie Scott. — I suggest, Mr President and gentlemen, that it is most important that we should restrict ourselves this afternoon to the question of principle; if we are agreed that, roughly speaking, the fruits of the ship are to be surrendered or abandoned with the ship, the question as to how the freight is to be assessed — whether it is to be on charter freight or bill-of-lading freight — might very well be left to the Permanent Bureau to make a report to the Diplomatic Conference, where all the different Powers will be represented, and where the final decision will be given on the Report after the thing has been worked out in detail.

(*Traduction orale par* M. Louis Franck).

M. Scott pense qu'il convient de se limiter à des questions de principe et de ne pas s'embarrasser des questions de rédaction ou de détail. La procédure serait la suivante. Le Bureau Permanent, ayant

pris connaissance des différentes opinions exprimées en ferait rapport et ce rapport serait adressé aux Gouvernements en même temps que les avant-projets de traités, car, dit M. Scott, tout ceci ira à bref délai à la Conférence diplomatique et celle-ci, ayant toute la matière devant elle, pourra prendre une décision.

M. Lefebvre (Alger). — M. Franck m'a quelque peu devancé dans la difficulté. Il vous a cité cette difficulté d'un navire qui voyage pour compte de son propriétaire et d'un navire en time-charter. Or, il est singulier de constater que l'on vous demande au nom de la justice et de l'équité de prononcer à l'égard de l'un et de l'autre un traitement différent. Pour ma part, je ne saurais l'approuver : Je suppose qu'un armateur envoie un navire de Venise à Tunis, pour charger une cargaison. Il n'a pas touché de fret. Et alors vous arrivez à cette conséquence singulière que si en cours de route le navire subit un évènement, l'armateur n'aura aucun fret à abandonner, tandis que s'il a loué son navire en time-charter, il devra le loyer. Quelle singulière bizarrerie ! Il ne paraît pas juste que vous assimiliez le fruit commercial du navire au fruit civil; il me paraît que vous devez protéger l'armateur contre une éventualité semblable. Je ne suis pas de ceux qui estiment que l'armateur doit être protégé contre ses fautes, au delà des limites du droit, mais nous avons pour devoir de prémunir l'armateur contre de semblables cas. Je vous demande en conséquence que le capitaine ne pourra être tenu de rapporter le loyer de son navire que si ce loyer correspond à un certain temps pendant lequel il a pu encaisser un fret. Mais lorsqu'au contraire le navire sera simplement loué et voyagera sur lest, il me paraît que vous ne pouvez contraindre l'armateur à rapporter le fret, parce que cette somme ne correspond à aucun fret quelconque. Voici mon amendement :

Ajouter au 1r paragraphe :

« *Mais le loyer ne sera dû par le propriétaire de navire*
» *que dans tous les cas ou un fret aurait été dû au navire et*
» *à raison de la période de temps pendant lequel ce fret aurait*
» *été dû* ».

(Signé) LEFEBVRE, H. R. MILLER.

M. AUTRAN, *président*. — Plus personne ne demande la parole? Je soumets donc au vote la proposition de nos amis américains.

M. BROWN. — May I ask whether the question may not be divided and the vote first taken upon that branch of it which relates to Nos. 1 to 3?

THE PRESIDENT. — That is accepted. Do you insist on admitting the Charter party hire? Cannot you give way on that and consent that it should be referred to the Permanent Bureau for examination?

M. BROWN. — We are quite willing that the matter should be referred to the Bureau if it is thought that that is the most desirable course, and will not press the matter to a vote if the Conference think that we should withdraw it.

M. AUTRAN (président). — Nos collègues américains sont d'accord pour renvoyer la question au Bureau Permanent, de manière à ne pas éterniser le débat et d'arriver à une solution.

Nous arrivons à une seconde question, celle-ci étant au commencement de l'article : ce sont les prix de passage et il y a notre collègue M. le Professeur Vivante qui demande la parole sur cette question.

Mais, Messieurs, je dois appeler la plus sérieuse atten-

tion de la Conférence sur les traités que nous discutons à l'heure actuelle.

Vous savez que le gouvernement anglais a subordonné son adhésion aux codes sur l'Abordage et l'Assistance à la condition qu'un projet de traité sur la Responsabilité et sur les Priviléges et Hypothèques fût soumis en même temps à la 3me Conférence diplomatique qui se réunira à bref délai. Il est donc absolument indispensable que nous arrivions, avant la fin de cette conférence, à soumettre aux Gouvernements intéressés un texte de projet sur la Responsabilité des propriétaires de navires et sur les Hypothèques et Priviléges maritimes. Or, nous sommes à la fin de notre deuxième journée de réunion, nous n'avons plus que deux jours, et nous n'en sommes encore qu'à l'article 3 de l'avant-projet sur la Responsabilité. Aussi le Bureau m'a-t-il chargé de demander à la Conférence si elle ne verrait pas un très grand avantage, au point de vue pratique, à ce que la limite du temps accordé aux orateurs fût réduite de 10 à 5 minutes et que d'autre part, les Associations nationales délégassent autant que possible un de leurs membres pour soutenir leurs opinions; car ce qui nous importe, ce n'est pas l'opinion de chacun de nous — opinion qui a certes une grande valeur — mais l'opinion de chaque pays.

Je regrette que ce soit notre collègue Vivante qui subisse le premier cette loi, mais nous ne pourrons arriver à vider notre ordre du jour si nous ne prenons cette mesure.

(*Translation by* Mr Leslie Scott).

It is proposed by the President that the time of the speeches should be limited to 5 minutes and that, so far as possible, each National Delegation should depute one of its Members to express the views of the Delegation. Where there are only two in a Delegation probably the rule would be relaxed, but the reason for the proposition is this, that the British Government has communicated with the

Belgian Government, asking for a postponement of the Diplomatic Conference on the first two Codes — collision and salvage — until the Venice Conference shall have brought up before the Belgian Government this Treaty on limitation of liability, with the view of that being brought before the Diplomatic Conference with the other two Codes. It is trerefore, the President reminds us, absolutely essential that this Code should be got through in a satisfactory form during this session, or, otherwise, the two first Codes on collision and salvage will fall to the ground. When I say « got through », I mean, got through in a form which can be presented to the Diplomatic Conference for further discussion, if any such further discussion upon it is necessary.

M. LE PROF. VIVANTE. — Ho chiesto di parlare per chiedare la soppressione di questo primo capoverso che dice : « Le prix du passage... etc. » Questo capoverso significa che allorquando l'armatore fa l'abbandono è in questo compreso non solo il nolo merci, ma anche il nolo passeggieri.

Ora se penso che nell' abbandono non è compreso il caso di responsabilità pel trasporto passeggieri, io mi domando se proprio sia questo il posto di risolvere tale questione; ed io ho pensato se non fosse il caso di comprendere nell' abbandono anche il nolo dovuto dai passeggieri, per due ragioni : una di logica ed una di pratica utilità.

La ragione di logica è questa : Io vedo un nesso fra la nave che si abbandona e la responsabilità dell' armatore, e capisco che egli sia obbligato ad abbandonare la nave per delle responsabilità incorse dalla nave, e che sia obbligato ad abbandonare il nolo, perchè il nolo, in fin dei conti, era pel correspettivo del trasporto che egli non ha potuto compiere. Ma che nesso esiste fra il viaggiatore ed il carico della nave? Dov' è il nesso logico fra i due elementi?

V' è pure una questione di pratica utilità. Io richiamo

l'attenzione dei miei colleghi che hanno sinceramente desiderato che la questione della responsabilità del capitano nei trasporti non venga pregiudicata. E volete vedere, invece, come la si pregiudica? Voi avete detto : Risolviamo cou la convenzione internazionale l'abbandono e la perdita del nolo nelle avarie pel trasporto delle merci, ma riserviamo alle leggi speciali la responsabilità dell' armatore pel trasporto dei passeggieri.

Ora se noi obblighiamo l'armatore ad abbandonare il nolo dei passeggieri ai danneggiati nelle merci, che cosa resta ai passeggieri?

Faccio un esempio. Supponiamo una nave che trasporti insieme merci e viaggiatori. Voi, con questa disposizione internazionale, dite all' armatore : « Lei si può liberare di ogni responsabilità con l'abbandono della nave e del nolo. » Ora che nave, che nolo, si lascia a questo armatore, a risarcimento del danno che ha subito?

Per ragioni di logica, di utilità ed anche di simmetria giuridica, riserviamo la questione, e per ora sopprimiamo questo capoverso dell' art. 2.

(Traduction orale par M. BETOCCHI)

M. le Prof. Vivante demande la suppression des mots « Le prix de passage est assimilé au fret en ce qui concerne l'abandon », demande qu'il base sur deux raisons de logique et de loyauté. Pour une raison de logique, parce qu'il ne comprend pas comment on puisse parler d'abandonner le prix de passage et le prix du transport des marchandises en même temps. Pour une raison de loyauté, parce qu'on a réservé aux législations nationales la limitation de la responsabilité en ce qui concerne le transport des personnes. Or, si on abandonne le prix de passage, au même titre que le fret, la question est préjudiciée.

(Verbal translation by M. L. FRANCK)

The points made by Professor Vivante in favour of the construction of the words « passage money » as being in the same position as

freight are two in number : the first is that, as the question of liability for personal loss and damage is reserved, you ought not to include passage money. If you include it, and afterwards some form of limitation is accepted for this sort of reverse, then you would have nothing to give to that class of creditors. Further, a second point, says Professor Vivante, is that, as you have said we are reserving the question of limitation on personal losses and not deciding it in any sense, you should reserve it fully, and therefore you must leave out all that is relating to the contract of persons.

Dr. ALFRED SIEVEKING. — I have only two remarks to make on behalf of the German Association. We are of opinion, first of all, that in the freight which shall be abandoned to the creditor there should not be included salvage money as far as salvage has been effected by ships whose business it is to enter into salvage operations, because the ships engaged in salvage operations earn salvage instead of freight. The second point is that we should like to see the freight which is to be abandoned to the creditors restricted to the freight due or paid for goods which have been on board at the time when the accident occurred.

M. AUTRAN *(président)*. — Pardon, mon cher collègue, sur le 3°, il a été voté et la question a été renvoyée à la Commission pour rédaction. Il a été entendu que nous réservons en principe pour examen pour le Bureau la proposition de M. Bradford. Si vous voulez parler sur d'autres passages, vous avez la parole, mais je vous prie de vous borner au point que nous discutons.

Dr. ALFRED SIEVEKING. — I beg your pardon, you are quite right.

M. G. MARTINOLICH (Trieste) — Io sono in parte della opinione del signor prof. Vivante. Anch' io credo che non si possa abbandonare o decidere che venga abbandonato

anche tutto il prezzo di trasporto dei passegieri, e perciò oltre alle ragioni addotte dal prof. Vivanti ve n' è un' altra, ed è questa : il prezzo che paga un passeggiero per andare in America, per exempio, non è soltanto prezzo di trasporto sulla nave, ma comprende qualche altra cosa differente; comprende il prezzo del suo mantenimento, della sua panatica. L'armatore deve fornire al passegiero mantenimento e cure durante il trasporto. Ora il prezzo di queste prestazioni è qualche cosa di differente dal trasporto, e trovo ingiusto che l'armatore, in caso d'abbandono, debba perdere anche il prezzo di tali prestazioni. È la stessa cosa come il mantenimento che viene fornito in una locanda, in un albergo.

Si dovrebbe trovare un temperamento, e non si dovrebbe abandonare l'intero prezzo di passaggio che comprende quella somma che viene pagata non pel trasporto, ma pel mantunimento delle persone; somma che secondo l'opinione generale degli armatori va dai 2/5 alla metà.

Forse la questione non è oggi ancora matura. E se oggi non può decidersi quale parte del prezzo di passaggio deve essere abbandonata, io appoggio la proposta del prof. Vivanti, o per lo meno, noi dell' associazione austriaca siamo contrarî a che sia abbandonato l'intero prezzo di passaggio.

(*Traduction orale par* M. Betocchi.)

M. Martinolich, au nom de la délégation autrichienne, appuie la proposition de M. Vivanti, pour les motifs énoncés par lui, et pour une autre raison encore : c'est que le prix de passage ne comprend pas seulement le prix du transport du passager mais également une prestation, c'est-à-dire le prix de la nourriture du voyage, absolument comme, en terre ferme, dans un hôtel.

Selon l'opinion actuellement reçue par les armateurs, la proportion entre le prix de la nourriture et le prix du transport est des deux cinquièmes à la moitié.

Toutefois, comme cette question n'est pas mûre, on pourrait tout au plus la renvoyer à une commission pour examen. Toutefois, le plus simple serait d'adopter la proposition de M. Vivante.

(*Verbal translation by* Mr Leslie Scott).

I may state very shortly in English that Sig. Martinolich seconds the proposal of prof. Vivante; he remarks that passage-money does not represent merely the cost of the carriage but also the cost of the maintenance of the passengers, the latter amounting to not less than two fifths or one half of the passage money.

Mr Booth. — Mr. President and gentlemen, my feeling on this subject corresponds very much to what I said this morning with regard to freight — that, I do not think the shipowners ought to ask their liability to be reduced too much. I think, myself, that it has always been considered that the freight and passage money were part of the fund which were to go to the creditors. I think we should adhere to that principle, and, just as with regard to freight it should be the gross freight, so with regard to passage money it should be the total passage money. But I also want to point out that in the majority of cases where the passage money amounts to any considerable sum at all, the ship with her earnings (probably without her earnings) will be found to exceed very considerably the limit of value of £ 8 a ton. I think certainly the large Italian passenger ships which are now running will be found to be very much above that value. They are, very largely, new steamers, and a modern passenger ship seldom falls below £ 10 or £ 11 per ton in value, even if fairly old.

(*Traduction orale par* M. Louis Franck)

M. Booth fait l'observation suivante :

Nous avons décidé ce matin, en ce qui concerne le fret, que les armateurs doivent se montrer larges : ils doivent abandonner le fret

brut, à forfait, sans réduction. Il n'a point d'autre opinion en ce qui concerne le prix de passage. Mais M. Booth ajoute que la question n'a pas d'intérêt pratique, parce que dans la plupart des cas, lorsque le prix de passage représente un montant sérieux, il s'agit de navires qui rarement représentent moins de £ 10 à £ 11 à la tonne.

M. AUTRAN (*président*). — Je crois que la question est suffisamment discutée et je vous demande de voter sur la proposition de M. Vivante, s'il la maintient; mais avant cela, je désire dissiper une équivoque. Dans les législations actuelles il a toujours été admis que les prix de passages étaient considérés comme le fret de cette marchandise humaine qu'est le passager et par conséquent, le prix de passage doit être considéré comme un fruit du navire qui doit être abandonné.

D'autre part, en ce qui concerne une réduction en France, je vous dirai que dans la pratique française, on n'en fait aucune et que lorsqu'un propriétaire fait abandon du prix de passage, il donne aux créanciers le prix de passage total, tel qu'il l'a reçu. La pratique française est donc d'accord avec les idées exprimées par M. Booth.

Enfin, une autre erreur qui paraît être commise sans doute par M. Vivante, est celle-ci :

Ce matin, lorsque nous avons décidé la question de la responsabilité des propriétaires de navires et que nous avons dit que la loi que nous projetons est une loi qui ne s'applique qu'aux choses, nous n'avons nullement entendu dire, je pense, qu'en ce qui concerne les personnes, la responsabilité du propriétaire fût indéfinie. Nous avons laissé à chaque législation nationale le soin de régler comme elle l'entend, cette question de responsabilité à raison de pertes de vies humaines ou de blessures.

M. Vivanti dit : mais vous avez attribué le navire et le fret aux créanciers pour marchandises. Mais les passagers, qu'en faites-vous ?

Il arrive, ce qui arrive tous les jours quand il y a plusieurs créanciers et un gage commun : ils viendront en concours entre eux.

M. VIVANTE (Venise). — Il signor Presidente ha detto che in Francia, e cosè si può dire anche in Italia, quando si abbandona il nolo, lo si abbandona per le merci come pei passeggieri, perchè le leggi obbligano l'abbandono di tutti i beni.

Ma dal momento che voi introducete con questa riforma una legge che limita la responsabilità per le merci, perchè volete abbandonare anche quel correspettivo che proviene dai passeggieri ? Che cosa resta — domando al *bureau* — da fornire ai passeggieri che rimangono vittime d' un abbordaggio ? Si dirà : accadrà come in un fallimento ; concorreranno insieme le famiglie dei viaggiatori morti ed i feriti.

Ma nel caso in questione, non c'è tale concorso dei creditori. Quì è detto che concorreranno pel valore della nave soltanto i danneggiati delle merci.

È meglio dunque che riserviamo tale questione, perchè se volessimo risolverla realmente, dovremmo ammettere il concorso dei danneggiati tanto per la perdita delle merci, quanto per la perdita delle persone.

Perciò io insisto nella mia proposizione.

(*Traduction orale par* M. LOUIS FRANCK).

M. Vivante insiste en faisant valoir l'argument suivant : Vous ne vous occupez pas de la responsabilité pour dommages corporels ; ne vous occupez donc pas du prix de passage. Voilà en substance ce qu'a dit l'honorable professeur.

M. LOUIS FRANCK. — Je ne peux m'abstenir de répondre quelques mots. Il n'y a rien de commun entre les deux

ordres d'idées qu'une similitude de mots. Quand vous abandonnez vous devez abandonner aussi le prix de passage qui fait partie de la fortune de mer, tout comme le fret.

Quelle sera la situation des gens qui ont subi un dommage corporel? Mais ils viendront, en vertu de leur loi nationale, prendre leur part de cette fortune de mer. Il n'est pas dit un mot, dans ce traité, dont le sens serait que seuls les créanciers pour dommages matériels auraient ce droit.

Nous passons au vote.

Ceux qui sont d'avis d'accepter le texte du projet répondront « oui ». Ceux qui sont d'avis d'accepter la proposition de M. Vivante répondront « non ».

L'article du projet est adopté par toutes les nations, sauf l'Autriche.

The article of the draft-treaty is carried by all the Nations, Austria excepted.

M AUTRAN. — Nous avons à examiner le dernier paragraphe de l'article 3 :

« Ne sont pas considérés comme accessoires du na-
» vire... etc.

M. COGLIOLO. — Io ho domandato la parola per sottomettere alcune osservazioni contro l'esclusione fatta delle indemnità pagate in virtù dei contratti di assicurazione; esclusione provocata dalla formazione del patrimonio di mare da abbandonarsi.

Per due ragioni io ritengo che le indennità di assicurazione debbano essere compresse nel patrimonio di mare.

La prima ragione è d'indole puramente giuridica, in quanto che noi abbiamo altri punti del diritto che ci dicono che l'assicurazione viene a sostituire la cosa.

M. LOUIS FRANCK, (Anvers). — Pour ne pas prolonger cette discussion inutile et avec toute la courtoisie possible, je me permets de faire remarquer à M. Cogliolo que s'il persiste, nous devrons certainement poser la question préalable.

La question de savoir si l'indemnité d'assurance serait comprise a été tranchée à trois conférences successives, et on ne peut donc plus la remettre en discussion.

M. COGLIOLO. — Dal momento che c' è questa unanimita delle precedenti conferenze, diventa inutile qualumque parola in proposito. Però, ci tengo risulti dal verbale la mia opinione personale : che la indennità debba essere compresa,per la ragione giuridica che il prezzo sostituisce la cosa ; e per una ragione di alta moralità, poichè io non trovo giusto che l'armatore prenda l'assicurazione per sè ed abbandoni la nave, dal momento che questa è sparita.

M. AUTRAN, (*président*). — Aucun amendement n'étant plus proposé, je considère le paragraphe final comme adopté.

(*Adhésion. — Carried*).

M. AUTRAN, (*président*). — Nous arrivons donc au dernier paragraphe de l'article 3.

M. LEFEBVRE, (Alger). — C'est au sujet de la question des surestaries que j'ai le désir de parler.

J'ai vainement cherché dans les articles 2 et 3 l'indication de la catégorie des créanciers à qui devait appartenir un droit de privilège sur cette indemnité spéciale. Je n'ai pas besoin de vous remémorer que les surestaries sont considérées par la plupart des tribunaux comme un accessoire du fret. Mais c'est à juste titre que l'on s'est élevé contre

cette notion. J'ai été, pour ma part, et dans différents procès, une véritable victime de cette façon de voir. C'est ainsi que j'ai vu juger par la Cour d'appel que celui-là seul pouvait être créancier de surestaries, qui était créancier du fret. Or, pour ceux qui sont habitués aux choses maritimes, cette définition est exorbitante.

Or, dans l'avant-projet que nous discutons, il est dit que le propriétaire ne répond pas personnellement, mais seulement sur le navire le fret et ses accessoires; dès lors, je n'aurais peut-être pas dû intervenir parce que j'aurais dû penser que le Comité Maritime International estimait, suivant la doctrine, que les surestaries constituent un accessoire du fret. Encore que cette doctrine me soit bien antipathique, j'aurais pu m'y rallier si elle avait eu pour effet de faire rentrer les surestaries dans les montants représentant l'actif à abandonner. Mais votre article dit que le propriétaire n'est pas tenu personnellement, mais seulement sur le navire, le fret et les accesoires du navire. Il s'ensuit que les surestaries ne sont pas comprises dans l'énumération de la formation de l'actif.

Je vous demande donc de le préciser, soit dans un article additionnel, soit en incorporant expressément le mot « surestaries » dans un des trois paragraphes de l'article 3.

Il est essentiel que les surestaries, qui sont un fruit qui accroît la valeur du navire et doit revenir aux créanciers, soient comprises dans les valeurs que l'armateur doit abandonner à ses créanciers.

(*Translation by* M. Leslie Scott)

Shortly what M. Lefebvre says is this, that if demurrage falls really under the same category as freight and its accessories it ought to be said : that demurrage is paid, in fact, for the use of the ship during the period that it is delayed, and that therefore although in

some regards objectionable he is willing to admit that it is, for practical purposes, a fruit of the voyage payable before the end of the voyage, as defined by the Code, and therefore within the principle of « Fortune de mer » at risk during the voyage, defined by the Code.

M. HARRY R. MILLER (London). — I do not wish to detain the Conference upon the remarks our friend has just made, but I should like to put this view before you, that demurrage is not at all one of the accessories of the voyage, or in any way of the same nature as freight. It is, in a sense, merely damages for detention, and is not a thing that is really contemplated when the charter-party is entered into. For these reasons, on behalf of myself, and, I think I may say of all my English colleagues, we do not think demurrage should be included.

M. AUTRAN (*président*). — L'amendement de M. Lefebvre se traduirait en ajoutant un 4° à l'article :

« *4° Les surestaries dues ou acquises pendant le cours du voyage* ».

Je dois dire qu'en France, on abandonne toujours les surestaries, en même temps qu'on abandonne le fret.

Plus personne ne demande la parole sur cet amendement ?

Je mets donc aux voix la proposition de M. Lefebvre.

Accepté à la majorité. — Carried by a majority.

M. AUTRAN (*président*). — Nous abordons donc l'article 4.

ARTICLE IV

S'il existe un droit de préférence sur le navire ou sur le fret en faveur de créanciers à l'égard desquels la limitation de la res-

If there exists in favor of creditors any right of priority on the vessel or freight with regard to which no limitation of liability is

ponsabilité n'est pas admise, le propriétaire du navire sera personnellement tenu de compléter en espèces, jusqu'à concurrence des sommes prélevées par ces créanciers, les valeurs formant la limite de sa responsabilité.

permitted, the shipowner shall be liable to make up the amount forming the limit of his liability by a payment equal to the sum for the recovery of which such creditors may avail themselves of their right of priority.

MR. BROWN. — The purpose of this Article, as I read it, is to compel a shipowner to preserve, for the benefit of a certain class of creditors, the value of a vessel, freight and accessories, and the class of creditors to be protected in that way, I think, is the class of creditors whose claims are limited — I mean in respect to which the shipowner's liability is limited. If that is the purpose of the Article, as I think it is, then I think it is not properly expressed, because the shipowner is only required to make good the fund in case of diminution by reason of priority of lien. I think the fund ought to be made good in case of any diminution. Suppose, for instance, there were concurrent liens of equal rank, and one lien is not limited in any way, whereas the other liens are limited, if all these lienors appear in Court together it will be the duty of the Court, in the first instance, to devote the fund rateably, and I tink, so far as any part of the fund is attributed to a lienor whose claim is not limited, that part of the fund should be made good. I therefore propose, as an amendment, that the words « right of priority » be struck out where they occur twice in this Article, and that the word « lien » be substituted.

MR. LESLIE SCOTT. — Will you kindly explain that a little more fully because it is an important thing.

MR. BROWN. — A suggestion has been made, and,

I think, very properly made, that my proposal should await the action of this Conference on the general subject of liens. That proposal has my hearty concurrence.

(*Traduction par* M. Louis Franck).

M. Brown signale que la rédaction de l'article 4 ne lui donne pas satisfaction, sous certains rapports, parce qu'il semble trancher non seulement une question de privilèges, mais qu'il semble prévoir également dans une certaine mesure comment des créanciers privilégiés pour lesquels la limitation existe, viendront en rang pro rata.

M. Scott propose de remettre la discussion jusqu'à ce que nous en soyons arrivés aux privilèges mêmes.

D'accord. — Agreed.

Article V.

Le propriétaire peut substituer au navire sa valeur à la fin du voyage, ou le montant de son prix en cas de vente par autorité de justice.

The shipowner may substitute for the vessel its value at the end of the voyage, or the total sum realized in case of a sale pursuant to the order of a Court.

M. Judge Bradford (United States). — I desire to offer an amendment, because it seems to me that Article 5 as it now stands is calculated to do very great injustice, as I think I can make plain in few words. My amendment is to strike out the words « Or the total sum realized in case of a sale pursuant to the Order of the Court ». It seems to me that the words. « A sale pursuant to the Order of the Court » ought to be struck out. Take the case of a judgment obtained in a Court, not in the Court of Admiralty, not in a Maritime Court, but in a Common Law tribunal and the sale of the vessel by order of a Judge. That sale, however it may be in other Countries, certainly in the United States will not divest Maritime liens. The ship will be sold subject to any Maritime lien.

Therefore if you have a vessel the clear value of which is I will say £ 50,000, and you have a Maritime lien upon her amounting to £ 40,000, what would the fund purchaser pay for that vessel — what would the fund realize if the purchaser knew that there were Maritime liens against that vessel amounting to £ 40,000? Would he bid the clear value of £ 50,000? Certainly not : all that that vessel would bring in under those circumstances would be £ 10,000. Now I cannot believe that this Conference intends any such result, and therefore in my judgment those words ought to go out.

(*Traduction orale par* M. LESLIE SCOTT)

M. Bradford vient de dire que la dernière partie de l'article doit être omise « ou le montant de son prix en cas de vente par autorité de justice » parce qu'aux Etats-Unis, on peut poursuivre un navire devant les tribunaux de droit commun et quand il y a une vente de navire par autorité de justice, le privilège continue même après cette vente; par conséquent, un acheteur en justice ne donnerait que la valeur du navire après déduction du montant des privilèges. Et M. Bradford ajoute qu'il ne croit pas que c'était l'intention de la conférence d'en arriver à ce résultat.

M. LESLIE SCOTT. — Sans doute, si je puis ajouter quelques mots, M. Bradford a raison; mais je me permettrai d'observer que c'est là essentiellement une question de rédaction que le Bureau Permanent pourra très bien arranger.

M. LOUIS FRANCK. — L'idée est celle-ci : il faut laisser au propriétaire le droit de donner à la place de son navire, la valeur en argent de ce navire. C'est la question de principe. Se pose ensuite la question de savoir comment on doit s'assurer quelle est cette valeur, et pour cela on avait ajouté à Paris que la vente judiciaire était un des

moyens qui signalait cette valeur. Mais les objections de M. Bradford sont extrêmement pertinentes et je crois que nous devons nous en tenir au principe et charger le Bureau Permanent de modifier la rédaction de l'article, car il faut évidemment que le créancier soit protégé contre tout arbitraire à ce sujet. C'est une question qui ne peut être tranchée par une rédaction qu'on improviserait.

M. AUTRAN (*président*). — Je crois que tout le monde est d'accord, sauf à déférer la question de rédaction au Bureau Permanent ?

(Oui !)

ARTICLE VI.

Dans tous les cas, le propriétaire a la faculté de libérer le navire, le fret et les accessoires visés à l'art. 2, par le montant d'une indemnité limitée, pour chaque voyage, à 8 livres sterling par tonne de jauge brute de son navire ou à une somme équivalente.

In every case the shipowner shall have the right to obtain the release of the vessel, the freight and the accessories mentioned in article 2, by the payment of an amount limited, for each voyage, to eight pounds sterling or its equivalent.

M. JUDGE BRADFORD. — In view of the action of previous Conferences it is only by reason of the strong conviction entertained by the Delegates from the United States as to the sentiments existing there upon the subject that I venture to offer the following resolution — to amend the proposed Draft-Treaty by striking out Article 6.

Now M. President and Gentlemen, personally I do not believe that there is one chance in a thousand that the United States will ever accept Article 6 as it now stands. It seems to us to be objectionable both in principle and also as calculated to do injustice to the creditor. In the United States we have a limited liability system which has

produced most satisfactory results. The liability is there limited to the value of the ship and the pending freight. There is no alternative extended there as is proposed here to the shipowner to pay an arbitrary sum in order to limit his liability. We submit to this Conference that as was stated by one of the English Delegates in another connection this morning, there is no logic in it. If there be a claim against a vessel the claim is against the entire lien; it is not against any aliquot, or any other proportion, or any portion, but against the entire lien. Now why should the right be extended to the shipowner to pay the arbitrary sum of £ 8 sterling in order to limit his liability. If £ 8 sterling amount to more than the value of the ship will he pay it? Of course not. Will he pay it unless it be to his advantage to pay it? Certainly not. As was stated by one of the distinguished gentlemen now on the platform, this morning, that alternative payment is for the advantage of the shipowner. Then if it be for the advantage of the shipowner at whose disadvantage is it? If the shipowner be benefited where does the detriment fall? We say upon the creditor. This proposition contained in Article 6 may be satisfactory and acceptable to a nation of shipowners when it is very far from acceptable to a nation of cargo-owners and cargo furnishers; and when the question is presented or arises as between English representatives of the first class of nation and those who represent the second there must be some concession or there can never be any agreement. Therefore I say, and I have no hesitation in saying it, that the United States in my judgment will not accept this Treatry with Article 6 in its present form. I fear I am trespassing upon the time of the Conference, but it is a matter of great importance. I do not go so far as to say that the United States would stand upon what it considers the logic of the thing under all circumstances,

provided there be a reasonable concession with respect to the amount per ton to be paid. Personally (and I think I speak for my colleague also) we are opposed to the principle of the thing as well as to the amount; but I wîll not venture to go so far as to say that if that amount be raised sufficiently to afford reasonable protection to the creditors as well as to the shipowners, it might not be accepted by the United States. But in its present form in my judgment it is simply an impossibility.

(*Traduction orale par* M. Louis Franck)

L'honorable M. Bradford dit que le principe de l'article 6 est inacceptable. Il pense que le Gouvernement des Etats-Unis ne pourrait y donner son assentiment. Le motif est que si vous donnez à l'armateur le droit de se libérer par l'abandon, c'est une grande faveur et il n'y a pas lieu d'y ajouter l'option, quand le navire à une plus grande valeur, de se libérer par le payement de £ 8 par tonne. Il dit que quant à lui-même et son collègue, ils sont adversaires de l'option entre les deux modes de libération, et il ne pense pas qu'on pourrait jamais décider le Gouvernement américain à adopter le traité tel qu'il est; mais il ne va pas jusqu'à dire que les Etats-Unis se refuseraient à changer d'attitude si on augmentait le chiffre de £ 8 suffisamment pour donner toutes garanties aux créanciers.

M. Louis Franck. — Je me permets de faire observer que l'honorable M. Bradford n'est pas *en ordre* comme on dit en Anglais, attendu qu'à trois reprises la Conférence à voté le principe, et j'ajoute que tout en étant extrêmement reconnaissant pour ce que M. Bradford a dit, il ne faut pas perdre de vue qu'à la Conférence de Londres les Etats-Unis étaient représentés par l'honorable M. Choate, ambassadeur à Londres, et M. Mynderse et que c'est là que pour la première fois le principe de ce système optionnel a été voté après un très long débat. Or, les Etats-Unis n'ont pas voté contre; ils ont voté pour. Et je crois également que lorsque le principe a été confirmé à la

conférence de Paris, les Etats-Unis étaient aussi représentés et que leur vote était dans le même sens.

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I think I am bound to say that His Honour Judge Bradford is not quite in order, because the Conference has three times voted on the subject, and I cannot forget that on one of the occasions the United States were represented by the Ambassador M. Choate. I may point out also that the principle of this Article is not before the Meeting. The principle has been decided upon by former Conferences, and the plan has always been first to settle after full discussion the principle and then refer it to some Sub-Committee in order that the general principle may be put into proper words to form a Draft-Treaty, and may be brought in accord with the general dispositions of law. We are at present in the second of those stages in the discussion of this matter. As far as the American Nation is concerned I was saying when I spoke in French that this principle of not giving an option but enlarging the American Continental principle of abandonment with a maximum limit of £ 8 a ton, has been introduced as a compromise after years of discussion between the Continental and American view on the one side and the British view on the other side; and that when this optional system was proposed the United States were represented at the London Meeting of 1899, and among the American Delegates representing the United States' Association was M. Choate the U. S. Ambassador and M. Mynderse. We voted upon and accepted the compromise, and although I have not the text before me, I think there were other occasions when the matter came up in which the vote of the United States was to the same effect.

M. Judge Bradford. — I think they abstained.

M. Louis Franck. — At London they voted for it.

Sir William Pickford. — After what M. Franck has said I have very little to add. I was going to point out that the principle of this Article had been accepted as a matter of compromise. I entirely agree with Judge Bradford that no Treaty or agreement of any sort or description will ever be got into working order if either the shipowners or the cargo-owners take every advantage that is to be obtained, and I hope that we and all the other Nations have always conducted the discussions here with an intention and a wish to make concessions to one another in order to come to an agreement. Of course there do come up points upon which we cannot agree, and then we do not agree ; but I should not like it to be thought that a shipowning nation is trying in these Treaties to get a concession in the way of an advantage against the Shipping nations, and I do not think the conduct of Great Britain has been to do this. We had our own simple law of personal liability limited to £ 8 a ton. The Continental Nations wish to have the system of abandonment introduced. We objected to it being introduced simply and without any alternative ; but we said if the alternative of £ 8 a ton was given we were willing to grant the alternative of the right of abandonment ; and that was agreed to long ago, as M. Franck has just pointed out. It may be well to upset it now or it may not, but I wish to make the position of the British representatives perfectly clear on this point — that that compromise having been accepted in that way, and being in their opinion a fair proposition for agreement, we certainly cannot assent to any modification either by the exclusion of the alternative of £ 8 a ton or by any increase of liability over the £ 8 a ton.

M. AUTRAN (*président*). — Je crois qu'après les explications fournies de part et d'autre, notamment par M. Pickford et M. Bradford et le résumé fait par M. Franck, il est superflu de remettre la question en discussion. Ce sera plus tard, à la Conférence diplomatique, que les Gouvernements auront à examiner s'ils persistent, mais quant à nous, nous ne pouvons que confirmer une fois de plus le principe. Par conséquent, et sous le bénéfice des observations de l'honorable M. Bradford, je vous prie de considérer comme acquis l'article 6.

M. BROWN (New-York). – I think in the remarks that have been made subsequent to my colleague's speech there has been a certain injustice done to the United States. I happen to know the views of M. Mynderse, the Delegate to London, as he was my partner, and I happen also to know the vieuws of our Ambassador M. Choate. Now both those gentlemen thought that our own system and the Continental system as to limitation of liability was the proper system. They were willing personally, if no other means could be found to bring about the unification of the law, to concede this double system of limitation, and in those views I fully concur. I feel the dual system is illogical and it is not a right system ; but it is better to have that system than diverse laws every where. Nevertheless I feel it is my duty to state to you the facts that have developed in my Country during these three years. We know now more than was known to M. Mynderse three years ago about the probable action of Congress. We have investigated what will probably be that action, and there is very little — almost no — chance of this Convention being adopted or ratified by the United States if that Article 6 remains as it now is ; and I feel it my duty to warn this Convention that its labours are not

likely to be of any great value on this point unless the adherence of the United States is secured. In support of that statement I take the liberty of telling you how large a part in the commerce of the world is taken by the United States. The latest statistics of our State Department representing the value of the Exports and Imports of all the Countries in the World state that the value of the Exports and Imports for the last year that is available (1904) are as follows :

Total imports and exports of the Continent of Europe in millions of dollars	2556
North America (excluding the United States)	433
South America	171
Asia	203
Oceania	53
Africa	33
United States	2452

You will see therefore that the commerce of the United States is substantially equivalent to the aggregate of the commerce of all Europe and amounts to more than 40 per cent. of the commerce of the whole World. Now I think it is hardly worth while to adopt any Treaty to which the United States shall not be a party — at least it would fail signally in achieving the results that are hoped for it.

M. LOUIS FRANCK. — I would not like it to be thought that anything which I may have said would be considered as being an injustice to the United States. The only thing I may perhaps be allowed to point out to M. Brown is that when he speaks of statistics of imports and exports he should not take the statistics of one side only ; because a large part of that commerce that he attributes to the United States is also our Continental commerce and is to

a large extent insured in Europe. I do not think we can go on in that way, each of us saying « Our Government will never accept this or that » : we should do our best to come to some sort of compromise. But the main point that I want to put to the Meeting now is that no proposal upon the merits of this Article is in order because the principle has already been decided; we must leave it as it is and face the events as they are.

ARTICLE VII.

Le voyage sera réputé fini après débarquement complet des marchandises et des passagers se trouvant à bord au moment où l'obligation est née.	The voyage shall be deemed to be at an end after the complete discharge of the merchandise and passengers on board at the moment when the obligation arose.
Les risques de tout nouveau voyage sont pour compte du propriétaire, sans qu'ils puissent diminuer le gage déterminé par les articles précédents.	The risks of every subsequent voyage shall be borne by the shipowner without the possibility of their diminishing the security defined by the preceding articles.

M. AUTRAN (*président*). — Sur ce point, il ne peut y avoir de discussion.

M. G. MARTINOLICH (Trieste). — Noi dell' Associazione austriaca siamó perfettamente d'accordo col tenore di questo articolo che ci pare, peró, abbia bisogno di due parole di completamento.

Quí si parla di bastimenti che hanno merci e passeggieri a bordo ; ma vi sono dei bastimenti che navigano vuoti. Noi proponiamo, per conseguenza, che vengano aggiunte le parole : « e pei bastimenti vuoti, all' arrivo del porto di destinazione ».

M. AUTRAN (*président*). — La rédaction de ce second paragraphe n'est peut-être pas très heureuse, et M. Ver-

neaux me dit qu'il en propose une autre. Là encore, je vous prie de renvoyer la rédaction au Bureau Permanent qui s'inspirera des idées ici indiquées.

Dr. Stubbs (London). — With regard to the Amendment proposed by the International Law Committee to the second part of Art. 7, it is very possible to consider that it is an omission or an oversight, but it appears to the Committee to be material to correct it. The second part runs as follows : « The risks of every subsequent voyage shall be borne by the shipowner without the possibility of their diminishing the security defined by the preceding Articles ». It does not say in what way they shall be borne by the shipowner, but it certainly reads as if it was meant that the shipowner shall be liable altogether. The Amendment we propose is in these words, that those two lines in the second part of Article 7 should run in this form : « *In respect of every subsequent voyage the shipowner shall be liable as defined by the preceding articles ; but this liability shall not diminish the security of claimants in respect of previous voyages* ». The last part of that paragraph is added because the wording of the second part of Article 7 is not good English, and, as far as I can understand the Frensch version is almost equally bad.

(*Traduction orale par* M. Louis Franck)

L'amendement de M. Stubbs est le suivant :

« *Pour tout voyage ultérieur, le propriétaire de navire sera responsable, ainsi qu'il vient d'être dit dans les articles précédents, mais cette responsabilité ne dominuera pas les garanties des créaneurs pour les voyages antérieurs* ».

M. Stubbs estime que la responsabilité dont s'agit n'est pas clairement définie et qu'il convient de ne pas laisser de doute à ce sujet.

Ce sont, en somme, des rédactions différentes.

M. Brown (New-York). — Without leaving my seat may I say a word? I think the first paragraph has an

obvious oversight in it, inasmuch as it does not provide for the case in which a voyage shall be broken up and the goods never discharged at all. I think there ought to be added at the end of that paragraph the words :

« OR ON THE JUSTIFIABLE ABANDONMENT OF THE VOYAGE ».

M. AUTRAN *(président)*. — M. Brown fait remarquer qu'on suppose que le voyage se termine toujours. Or, il se peut que par suite d'un accident, le voyage ne se termine pas. Il conclut que le voyage sera également considéré comme fini lorsqu'il doit être considéré comme définitivement abandonné.

ARTICLE VIII.

Les dispositions précédentes ne portent pas atteinte au droit des créanciers de saisir le navire dans un port d'escale, même avant la fin du voyage. La caution donnée pour obtenir mainlevée ne sera pas affectée par les événements ultérieurs.

The preceding provisions shall not prejudice the right of the creditors to seize the vessel at a port of call even before the end of the voyage. The bail given to obtain the release of the ship shall not be affected by subsequent events.

M. AUTRAN *(président)*. — A titre d'explication je dirai que cet article est inspiré par ce que nous pratiquons chaque jour. Il peut arriver qu'un navire, étant entré en abordage avec un autre, est saisi dans un port d'escale, à la requête des créanciers victimes.

Voici alors ce qui se passe d'ordinaire. Le propriétaire du navire saisi ou ses assureurs donnent immédiatement caution pour le faire relâcher et dans ces conditions, comme cette caution est spécialement affectée aux réclamations qui sont ainsi formulées, il est bien certain que quels que soient les événements ultérieurs qui pourront

survenir ensuite dans la navigation, cette caution demeure acquise aux premiers créanciers et n'est nullement affectée par ces événements ultérieurs.

Ce texte adopté par la Commission de Paris correspond à des mesures dont le caractère d'utilité pratique est incontestable.

M. BROWN (New-York). — It is the opinion of the American Delegates that this Article, as drawn, impairs the symmetry of the entire work of this Conference — in effect it splits up one voyage into two parts with separate liabilities. I think the liability ought to be a single liability from beginning to end, and all covered by the same limit.

(*Traduction orale par* M. AUTRAN)

M. Brown dit que d'après les vues de l'Association américaine, il faudrait qu'il n'y eut qu'une responsabilité unique par voyage, que le texte est donc en contradiction avec ces vues.

M. AUTRAN (*président*). — Mais si nous devons entrer dans cette voie, qu'est-ce qui arrivera ? C'est que lorsqu'un accident survient et que le navire est saisi, le propriétaire le laissera là où il est et ne donnera pas de caution, de sorte que le navire ne naviguera plus. Cela ne serait ni à l'avantage du navire et de sa cargaison, ni à celui du créancier, que des capitaux aussi considérables soient immobilisés pendant un temps qui pourrait être très long.

M. BROWN (New-York). — If I may be indulged with another word : It is, of course, a practical necessity of commerce that vessels should not be detained, but released immediately on bail ; and that would be the case. In order to explain to the Conference what is my idea. I will read my proposed Amendment to Article S. « *The preceding*

provisions shall not prejudice the right of the creditors to seize the vessel at any time even before the end of the voyage ; but the measure of redress accorded to all the creditors for the voyage shall not exceed the value of the vessel at the end of the voyage, together with her freight and accessories. The proceedings authorised in this Article may, nevertheless, be prosecuted to Judgment and execution provided the several creditors give proper guarantees to refund to the shipowner any sum which shall prove to have been in excess of the proper measure of redress. »

ARTICLE IX

Les dispositions précédentes s'appliquent aux responsabilités relatives à l'obligation d'enlever l'épave du navire, qu'il y ait ou non faute du Capitaine.

Elle ne s'appliquent pas aux responsabilités dérivant des fautes personnelles du propriétaire.

The preceding provisions shall apply to liabilities arising out of an obligation to raise the wreck of a vessel whether the wreck was occasioned by the fault of the Captain or not.

They shall not apply to liabilities arising from the personal default of the owner.

M. AUTRAN (*président*). — Le paragraphe 1er de l'article 9 s'applique au cas de cette obligation exceptionnellement onéreuse que certains Gouvernements font peser sur les armateurs d'enlever l'épave de leur navire coulé dans un endroit quelconque. Cette opération coûte quelquefois extrêmement cher et en France, la loi du 12 août 1885 est venue mettre un terme à de véritables abus qui étaient commis par les juridictions administratives en la matière. On considérait que le fait d'abandonner une épave dans un chenal, c'était comme abandonner une charrette sur la grande route. La loi du 12 août 1885 en France est venue donner satisfaction aux armateurs dans cet ordre d'idées, et somme toute, le premier paragraphe de l'article 9 n'est

à quelque chose près que la reproduction de cette disposition de notre loi française. Personnellement, je vous demande d'adopter l'article 9 en entier.

M. RENÉ VERNEAUX. — Je déposerai un amendement et je demanderai au Bureau d'en tenir compte.

M. AUTRAN (*président*). — Monsieur le représentant du Gouvernement espagnol, désire vous faire part d'un vœu qui est émis par les Chambres de commerce espagnoles.

M. JOSÉ VELEZ Y CORRALES (Espagne). — Si la question est ou non pertinente, c'est ce que vous apprécierez, mais voici ce que j'extrais du vœu émis par les Chambres de Commerce d'Espagne :

« Qu'il intervienne un accord limitant la responsabilité » des armateurs en cas d'accidents pendant le chargement » et le déchargement, eu égard aux cas fréquents où des » navires espagnols sont retenus à raison de pareilles » causes, dont doit répondre celui qui surveille ces opé- » rations, ou celui pour compte duquel elles se font » (1).

Dr. CHARLES STUBBS (London). — I have to propose one short additional Article, which I will call Article 10, in the following words : « *If, according to the National Law the charterer is liable as owner he shall have the same right to the limitation of liability as the owner* ». The draft Treaty, as it stands at present, relates to the limitation of ship-

(1) « Un acuerdo limitando la responsabilidad de los armadores » en los casos de accidentes en la carga o descarga, en vista de la » frecuencia con que actualmente se declara la traba de buques » españoles por aquellas causes, de las que debe ser responsable » quien verifique aquellas operaciones o la persona por cuya cuenta » se tragan ».

owners' liability; and, in England, until recently, no one had an idea that there could be any question that a charterer, who was more or less in the position of the owner for the time being, would be able to limit his liability. But a case came before the Courts a short time ago in which it was held that the charterer, although he was, in the circumstances, liable and had to pay a considerable sum, was not entitled to the privilege of the owner of limiting his liability. It may possibly be that the law of other countries will be found to be in the same position; and, if that is so, it will be useful to have this Article in the Treaty.

M. JUDGE BRADFORD. — I beg to second the Amendment. I think it is eminently proper.

(*Traduction orale par* M. LOUIS FRANCK)

M. le Dr. Stubbs propose l'amendement suivant, dont il ferait un article 10 :

« *Lorsque, d'après la loi nationale, l'affréteur est tenu de la même responsabilité qu'un propriétaire de navire, il aura droit à la même limitation que le propriétaire de navire.* »

M. Bradford a déclaré appuyer cette proposition.

Quand l'affréteur, — dans des circonstances que nous n'avons pas à examiner — se trouve tenu au même titre qu'un propriétaire de navire, cet affréteur doit avoir le même bénéfice qu'un propriétaire de navire aurait eu lui-même et le même droit de recourir à l'abandon. Il ne faut pas que les créanciers viennent dire : Vous, vous n'êtes pas le propriétaire et vous n'avez pas le droit de vous libérer par l'abandon.

M. LOUIS FRANCK. — En ce qui me concerne personnellement, je n'ai pas pu demander l'avis de nos amis de Belgique.

M. RENÉ VERNEAUX (Paris). — Je déposerai un amendement dans ce sens :

« *Les créanciers pour dommages visés dans les précédentes dispositions n'ont pas d'action contre l'armateur, en tant que personne distincte du propriétaire de navire* ».

M. CH. EUG. LEFEBVRE (Alger). — Je demande la parole pour déterminer quelle est la personne à laquelle les créanciers devront s'adresser. Il ne semble ni naturel, ni logique, ni juridique que dans le travail que nous avons à parfaire à l'heure qu'il est, nous envisagions une catégorie d'armateurs qui ne soit pas responsable à l'égard des créanciers. Il me paraît que la personne responsable peut seule être le propriétaire, puisque c'est la personne que les créanciers ont immédiatement devant eux. Mais vous pourriez, pour donner satisfaction aux délégués qui viennent de parler, stipuler que le propriétaire devra payer, sauf son recours contre l'affréteur, ce qui semble plus juste, et surtout plus pratique.

M. AUTRAN (*président*). — La question qui est posée par M. Verneaux est absolument différente de celle posée par M. Stubbs.

M. Stubbs a en vue le time-charterer et dit que toutes les fois que, d'après la loi nationale, le time-charterer sera exposé aux mêmes responsabilités, il aura également le bénéfice de la même limitation que le propriétaire de navire.

Cela suppose par conséquent que pour pouvoir abandonner le navire ou pour pouvoir se libérer par un payement de £ 8 à la tonne, il devra s'entendre préalablement avec le propriétaire du navire.

L'amendement que M. Verneaux propose d'ajouter, vise une toute autre situation. C'est celle où il s'agit d'un navire exploité par un armateur qui n'est pas le propriétaire du navire, et si l'on poursuit les principes du droit

civil jusqu'à l'extrême, cet armateur serait indéfiniment responsable, tandis que le propriétaire du navire ne serait pas responsable, puisque ce ne serait pas lui qui conduirait le navire.

Dans ces conditions, je crois que les deux amendements sont également raisonnables.

Je crois que nous pouvons accepter l'amendement de nos amis anglais; d'autre part, je crois que nous pouvons également nous déclarer d'accord sur l'amendement de M. Verneaux, sauf rédaction, bien-entendu.

Je crois que nous sommes tous d'accord sur le principe : c'est que lorsqu'un « managing owner who is not one of the owners » est dans la même situation qu'un véritable propriétaire de navire, il doit avoir également les mêmes droits et les mêmes obligations.

En vous remerciant de la bienveillance avec laquelle vous avez bien voulu vous conformer au désir exprimé par le Bureau pour la « limitation des discours », je déclare la séance levée.

(*La séance est levée. — The Conference then adjourned*).

SÉANCE DU VENDREDI, 27 SEPTEMBRE 1907.
SITTING OF FRIDAY, SEPTEMBER 27th, 1907.

PRÉSIDENCE DE M. LE PROF. ALBERTO MARGHIERI
PROF. ALBERTO MARGHIERI IN THE CHAIR

M. MARGHIERI, (*président*). — Messieurs, avant de continuer la discussion des autres articles, je crois de mon devoir de dire quelques mots sur la question qui a été soulevée par nos amis italiens.

Evidemment, nous n'allons pas revenir sur la question de fond. Cette question de fond a été tranchée par l'assemblée. Mais il y a un point sur lequel je tiens à dissiper toute équivoque, en posant la question dans ses vrais termes.

Nous avons reconnu opportun de constater que l'assemblée a manifesté une opinion, si ce n'est pas un vote, contre un courant d'idées assez étrange qui est en train de se former en Italie et qui serait tout à fait contraire aux principes du droit maritime de tous les Etats. Le principe de la responsabilité limitée, évidemment, doit être appliqué, non pas seulement aux marchandises, mais aux personnes. Il y aura des systèmes différents, selon le droit continental ou le système anglais. Le droit continental sera le système allemand ou le droit italo-français qui aboutit à l'abandon, ou le système anglais, qui fixe une indemnité déterminée par le tonnage.

Mais il serait absurde qu'un système contraire à la responsabilité limitée prenne le dessus, et que, quand il s'agit de la responsabilité envers les personnes et surtout envers les émigrants, on cherche à faire prévaloir qu'il ne doit pas y avoir lieu à limitation du tout.

Quand j'ai expliqué cela à mes collègues du Bureau, ils se sont vivement élevés contre la prétention de vouloir introduire un nouveau système ruineux de responsabilité indépendamment des différents systémes des Etats.

En mettant ainsi la question au point, je prie l'assemblée de fortifier le groupe italien dans son ordre d'idées, c'est-à-dire de protester contre cette tendance qui serait absolument contraire à tout progrès, à l'industrie et au commerce et qui rendrait tout à fait impossible la concurrence des armateurs entre eux.

Je crois que tout le monde est d'accord sur ce point. On pourrait mettre au procès-verbal la déclaration du Bureau que j'ai l'honneur de faire à l'assemblée et passer tout simplement à l'ordre du jour.

(*Verbal translation by* Mr. Leslie Scott).

The President has pointed out, in regard to the discussion which took place yesterday raised by the Italian Delegation as to a possible limitation of liability for loss of life and personal injuries, that, although the Conference cannot again raise that as a question of principle, it having already been decided in previous Conferences that the Limitation Code was not to extend to any question of limitation for personal injuries or loss of life, there is a very strong feeling in the Italian Delegation that, as a matter of opinion, and as an expression of view on behalf of the Conference, it is useful to raise the question, and for this reason, that in Italy at the present time there is a certain opinion in favour of abolishing or refusing to admit any limitation of liability whatever for loss of life and personal injuries; and it is felt very strongly on the part of the Italian Delegation that any such view would be contrary to the legislation admitted in practically all other countries, which allows of limitation in the case of loss of life, and that this would be inimical to the real interests of Italy, because inimical to the interests of Italian shipowners. The President therefore suggests that an expression of our opinion would strengthen the hands of the Italian Delegation with their own countrymen in putting forward the view that there ought to be, as there is in England and in most other countries, some limitation in

respect of the liability with regard to loss of life and personal injuries. He asks whether he may assume that the Conference does accept the view which he has thus put forward and is of opinion that a limitation of liability for loss of life is a proper enactment in Italy as elsewhere.

(*Approbation*).

M. Cogliolo. — Avendo avuto l'onore di sollevare la questione, mi permetto a nome dei miei colleghi italiani ed a nome degli armatori che per non prendere la parola hanno incaricato me di parlare in questo momento, di ringraziare il signor presidente ed il *bureau* del modo come hanno presentato la questione, e di ringraziare tutta l'assemblea del modo come ha accolto le idee nette, precise esposte dal nostro egregio presidente.

In Italia, dottrina e giurisprudenza, nella parte maggiore, sono nel senso antico, tradicionale, che cioè l'abbandono libera anche di fronte alle persone; ma siccome qualche deviazione da questo principio fondamentale ha potuto osservarsi, così questa osservazione solenne, e l'altra che verrà dopo gli studi del *bureau*, varranno a dimostrare che l'industria del mare che sarebbe atterrita e spaventata se non fosse possibile l'abbandono per la responsabilità di fronte alle persone, ha invece tutta la ragione di avere confidenza non solo nel *bureau* marittimo, non solo nei governanti, ma eziandio in tutti i giuristi che sapranno tutelare i principî tradizionali, come le esigenze legittime del commercio marittimo.

(*Traduction*)

Ayant eu l'honneur de soulever cette question, je me permets, au nom de mes collègues italiens et au nom des armateurs qui m'ont chargé de prendre la parole en ce moment, de remercier Monsieur le Président et le Bureau pour la manière dont ils ont présenté la question, et de remercier l'assemblée toute entière de la façon dont elle a accueilli les idées nettes et précises exprimées par notre honorable président.

En Italie, la doctrine et la jurisprudence se sont prononcées, dans la majeure partie des cas, dans le sens des traditions antiques c'est-a-dire que l'abandon est libératoire également vis-à-vis les personnes; mais si certains esprits ont pu méconnaître ce principe fondamental, les remarques solennelles qui ont été faites après l'étude de la question, démontreront à l'industrie de la mer, qui serait prise de panique s'il ne lui était pas possible de se libérer par l'abandon de la responsabilité envers les personnes, qu'elle est fondée à avoir confiance, non seulement dans le Bureau maritime, non seulement dans les gouvernements, mais aussi dans tous les juristes qui sauront défendre les principes traditionnels comme les exigences légitimes du commerce maritime.

M. MARGHIERI (président). — Nous passons donc à l'ordre du jour.

Hypothèques et Privilèges Maritimes
Maritime Mortgages and Liens on Ships

(CONTINUATION)

Mr. J. H. SIMPSON (Liverpool). — Mr. President and gentlemen, I represent the Banks of England at this Conference and, therefore, to a certain extent, I suppose I represent the interests of creditors generally. The question therefore of the Draft-Treaty on Hypothecations and Maritime Liens is of great importance to me, and I would like to say, before we begin the discussion, what I consider are desirable principles to follow in regard to the matter of mortgages and liens. The first essential seems to me to be that there should be absolute uniformity and certainly as far as possible all over the world in regard to the rights of the various classes of creditors : there should be no uncertainly as to the number or the nature of the liens ; and, above all, it should be recognised all over the world that mortgages properly executed in the country of their origin

will be recognised by the Maritime Law of every other country ; I cannot speak with any certainty as to the prevalence in other countries of liens against mortgages of ships, but I can say this, that as far as England is concerned it is becoming more and more common for a shipowner to raise money by either giving a mortgage on his ships, or by giving, what is equivalent to a mortgage, debentures or *obbligazioni*. These mortgages and debentures ought to be beyond all question: the conditions under which they will be valid ought to be known and ought to be recognised everywhere. It ought not to be possible for a mortgagee to lose his rights owing to the operation of some local National law ; and, therefore, I press for this — that we should recognise, first of all, that mortgages properly executed should be accepted and recognised all over the world.

The next point is as to the liens. Now, as I stated before, the important point there seems to me to be that the liens should be well defined, should be as few in number as possible, and should be terminable at a particular time. In the Draft-Treaty that period is quoted as 2 years. You can quite see the desirability of naming a period at which a lien should terminate. At present, I understand that many liens in different parts of the world are for an indefinite period of time, and one cannot say with certainty, from the point of view of the creditor, that a ship, is absolutely free from claims. Therefore I hope that this Conference may see its way to make liens terminable and to define very closely what liens ought to be recognised; and that no other liens should come into operation except those named in the Treaty. With regard to how many liens, and what liens ought to be recognised, it is perhaps hardly right that I should speak at this moment; but I would very strongly urge the Conference

to endeavour to waive all liens except those of really vital importance.

There are many small liens recognised by the laws of different Continental countries and I think you will agree with me that it is most important to clear all liens out of the road and leave on the Treaty only such liens as are af real vital importance to the creditors. There is one further point that I should like to make : it may be said : « Well, if the different Nations give up various liens which, at present, they have the right of imposing, how are the creditors to protect themselves ? » I should like to draw your attention to two points bearing upon this matter. The first is that if it is known with absolute certainty what liens can be created and what liens cannot be created, the risk which the creditor has to take when he does not know the lien may always be insured against; and the possibility of insurance by a creditor of any claim is therefore an important thing to remember. The next point is that in consequence of the great growth throughout the world of financial facilities — facilities for remittance of money by cable to all parts of the world, results in this, that very often a creditor, who cannot get a lien, can demand and will receive an immediate cash payment. Bearing all these points in view, I would finally sum up what I wish to say in these words : — That I hope you will endeavour to make as absolutely safe as possible and recognised all over the world, mortgages or debentures on ships ; and, secondly, that you will endeavour to keep as few as possible the liens and to define very carefully what they are and the conditions under which they shall run.

(*Traduction par* M. Louis Franck)

M. James Simpson représente la Central Association of Bankers de

Londres et l'Association of Country Bankers d'Angleterre, c'est-à-dire presque toutes les banques anglaises.

Voici brièvement les observations qu'll présente :

Parlant au nom des banquiers, il lui semble qu'il peut aussi parler au nom des créanciers de navires ou des armateurs. Pour eux tous, l'unification du droit maritime en matière d'hypothèques et de Privilèges, était devenue une nécessité urgente. En Angleterre le crédit réel en matière maritime augmente tous les jours, soit sous forme de prêts ordinaires faits sur mortgages ou hypothèques, soit sous forme d'obligations hypothécaires. Il est probable que ce mouvement s'étendra à d'autres pays et correspond à des facteurs profonds de la transformation de l'armement maritime. Il est donc essentiel que ce crédit réel soit assuré d'une base solide, et par conséquent, il est indispensable qu'une hypothèque légalement et régulièrement constituée dans un pays, soit respectée dans tous les autres.

Il n'est pas moins indispensable que le régime des privilèges soit réglé d'une façon rationnelle. Il faut une bonne définition des privilèges ; il faut surtout que le nombre des privilèges soit aussi restreint que possible et que cet avantage soit strictement limité aux créances d'importance vitale.

Mon impression, ajoute M. Simpson, est que dans les législations continentales, il y a un grand nombre de créances auxquels on accorde un privilège qui n'ont qu'une importance secondaire. Le mal qui en résulte au point de vue du crédit réel est celui-ci : c'est que leur durée étant illimitée, et rien ne les signalant aux tiers, il y a toujours un grand risque pour les prêteurs sur hypothèque : à raison de l'existence de ces privilèges, il n'y a jamais aucune certitude.

Enfin, M. Simpson attire l'attention de la conférence sur ces deux considérations.

Il ne faut en principe maintenir comme créances privilégiées que celle dont la survenance représente un risque susceptible d'assurance maritime, puisque dans ce cas, le créancier hypothécaire, en se faisant endosser la police ou en assurant lui-même, se met à l'abri de la survenance de pareilles créances.

D'autre part, il ne faut pas perdre de vue que les créanciers, à qui vous allez enlever le privilège, ne sont plus dans la situation dans laquelle ils étaient jadis, quand ces privilèges ont été inscrits dans la loi. La facilité des communications, l'organisation des maisons de banque et des maisons maritimes, la possibilité d'effectuer des payements par télégraphe, tout cela permet aux créanciers, qui ne peuvent

avoir un privilège de se faire payer au comptant et par conséquent d'échapper à tout danger.

Dans ces circonstances, M. Simpson a vivement insisté pour que la conférence évite l'excès des privilèges et s'efforce de donner la sécurité et des moyens d'exécution facile dans le monde entier, aux créanciers hypothécaires.

M. MARGHIERI (*prédident*). — Nous passons donc à l'article I.

ARTICLE I.

Les hypothèques, mortgages, gages sur navires régulièrement établis et rendus publics dans leur pays d'origine, seront respectés dans tous les autres et y produiront le même effet que dans le pays d'origine.

Hypothecations, mortgages and securities duly made and registered in the country of their origin shall be acknowledged in all other countries and shall therein have the same effect as in the country of their origin.

M. ENRICO BENSA. — Messieurs, J'ai demandé la parole pour appeler votre attention sur la nécessité d'un système international de publicité à l'égard des charges réelles sur les navires.

L'article I dit :

« Les hypothèques, mortgages, gages sur navires régulièrement établis, et rendus publics dans leur pays d'origine, seront respectés dans *tous les autres* et y produiront le même effet que dans le pays d'origine ».

Il me semble qu'on va peut-être un peu trop loin en donnant une efficacité internationale à toutes sortes de charges réelles sur les navires, aussitôt qu'on a rempli les formalités édictées dans le pays d'origine, qui peuvent être parfois très insuffisantes. Je sais bien que la question a déjà été abordée par le Comité Maritime International dans d'autres séances et qu'elle a paru mériter quelque attention, mais les objections qu'on a faites étaient telles

qu'il a semblé qu'il fallait laisser à la législation de chaque état le soin de régler la question de publicité parce que l'on a craint de s'imiscer dans le système législatif de chaque Etat. Permettez-moi de croire qu'il faudrait au moins arrêter quelques règles générales à ce sujet qui soient de nature internationale. On comprend bien qu'il faudra sacrifier quelque chose. Je crois que nous, Italiens, nous avons à cet égard le meilleur système de publicité, parce que toute charge sur le navire est inscrite dans l'acte de nationalité de celui-ci et reçoit, par ce moyen, la publicité la plus étendue. Mais je vois que même le Comité Maritime International a cru que cette publicité était généralement nécessaire car en renonçant à un système uniforme on a toutefois dit que le traité ne sera conclu qu'avec des Etats ayant en matière d'hypothèques un système suffisant de publicité ; mais les détails de cette publicité sont du domaine des législations nationales. Si on reconnaît que le système de publicité est insuffisant, on ne peut pas conclure le traité. Il me semble que cela équivaut à dire qu'il faut que le système de publicité soit considéré et que quelques bases générales — sans entrer dans les détails — sont considérées comme une nécessité par la Conférence.

J'avais l'honneur de rappeler cette nécessité dans un rapport que j'ai présenté â l'Association italienne. Si les règles que nous suivons dans nos travaux ne nous permettent pas d'entrer trop profondèment dans la législation de chaque pays et de prescrire des règles qui soient minutieuses et absolues, nous devons en tout cas donner des indications générales que chaque pays devra observer, à défaut de quoi nous devrons dire que les pays qui ne donnent pas suffisamment de garanties sous ce rapport — et ils sont malheureusement assez nombreux — seront exclus. Par exemple, il y a plusieurs pays, la République

Argentine, entre autres, qui se contentent d'une inscription au registre local de commerce. Or...

Un délégué argentin. — Et sur les papiers du navire. C'est l'article 1055 du code,

M. ENRICO BENSA. — Mon observation tombe donc; mais je sais qu'il n'en était pas ainsi, il y a quelques années.

Si l'on ne s'arrête pas à ce système d'une règle générale, il faudra s'en fier à la loi du pavillon, et dans ce cas, la difficulté sera encore plus grande.

(*Verbal translation by* Mr. LOUIS FRANCK).

I will just translate what M. Bensa said in moving Article 1 : « Hypothecations, mortgages and securities duly made and registered in the country of their origin shall be acknowledged in all other countries and shall therein have the same effect as in the country of their origin ». M. Bensa has suggested that the Treaty, instead of referring to the National Law of the various countries as to the formalities of publicity, should fix certain rules according to which, at least in a general way, this publicity should be organised and ascertained ; so that there may be some guarantee about it. With the President's permission I will add a word in French upon this same subject.

M. LOUIS FRANCK (Anvers). — Si Monsieur le Président le permet, je répondrai, au nom de la Commission de Paris, ceci à mon honoré Collègue M. Bensa.

En matière de publicité d'hypothèques, il n'y a qu'un système complet, ou rien. Vous ne pouvez vous borner à établir des règles générales, car la manière dont cette publicité est conçue et organisée dans les différents pays, tout en étant de même efficacité, est absolument différente non pas seulement dans les détails mais dans le système général. Dans ces conditions, il faut faire crédit

aux Etats et aux législations nationales. Ils ont le plus grand intérêt à rendre cette publicité aussi efficace que possible. C'est ce qui s'est passé dans une matière plus importante : celle des brevets. Quand on a fait la convention de Paris et de Madrid sur les brevets, on s'est référé aux législations nationales, pour toutes les questions de ce genre. On ne peut faire autrement dans l'espèce.

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I will just repeat in English what I have, myself, said upon this matter. I said : One ought to give credit, on these matters of formality and of the organisation of publicity in regard to hypothecations, to the various countries. This has been done in another Department of International Law with regard to Letters Patents for Inventions, and I added that any attempt to make general rules will be absolutely useless. You must have exact rules on such matters and those exact rules can only be fixed by the National Legislations.

M. FR. BERLINGIERI (Gênes). — Je comprends la difficulté qu'il y aurait à établir un système de publicité internationale ; mais je crois qu'on pourrait résoudre aisément la difficulté en proposant d'ériger en règle internationale l'obligation de mentionner les hypothèques, les gages, les mortgages sur l'acte de nationalité ou sur la lettre de mer, etc. Cela éviterait beaucoup de difficultés, car les créanciers auraient le moyen de savoir tout de suite le crédit qu'on peut accorder à un propriétaire de navire et on ne pourrait pas tomber dans des surprises.

Voilà la proposition que je me permets de faire. J'appelle sur cette proposition l'attention du Bureau, car dans les travaux préparatoires, on avait précisément envisagé la

proposition que je fais : c'est-à-dire, chercher à ériger en règle générale l'obligation de mentionner sur l'acte de nationalité ou la lettre de mer du navire les hypothèques ou droits réels qui le grèvent. C'est du reste le système italien qui a été reconnu par tous les auteurs et par la doctrine comme le meilleur, parce qu'il sauvegarde suffisamment les intérêts des tiers.

M. PERREYDON (Buenos-Aires). — J'ai demandé la parole, Monsieur le Président, pour indiquer une modification de rédaction à l'article 1 et pour répondre à ce qu'à dit M. le Professeur Bensa. M. Bensa a dit que dans la plupart des pays, il n'y a pas de publicité suffisante et il a mentionné erronément la République Argentine comme appartenant à cette catégorie d'Etats. Tous ceux qui connaissent la législation de notre pays, doivent savoir qu'elle est sous ce rapport la plus avancée du monde. Elle a repris toutes ses dispositions des législations de l'Europe et des Etats-Unis.

Quant à l'article premier du projet en discussion, je pense qu'il faudrait remplacer la rédaction choisie par une autre plus juridique et plus compréhensible. L'article dit :

Les hypothèques . . . . etc. *régulièrement établies* . . . . »

C'est une question qui réfère à la forme des actes juridiques et c'est un principe bien connu partout que la forme des actes juridiques est toujours réglée par les lois du pays ; c'est le principe *locus regit actum*. Nous pourrions donc mieux dire : « Les hypothèques, mortgages, etc. établies conformément à la loi du pays d'origine . . . . »

(*Verbal translation by* Mr. LOUIS FRANCK).

M. Berlingeri has just said that, although agreeing with the rule that the Treaty should not enter into details as to the forms of

publicity with regard to mortgages in the various countries, it may be perhaps wise to establish as a general international rule that any mortgage of a ship should be mentioned on the Act of sale — the Register of the ship, or the Act by which the ship is entitled to fly the National flag, or some other document which must be on board. so that, at the first glance, one may ascertain what is the financial position of the ship. M. Perreydon suggests that, instead of the words « regularly established and rendered public », it may be said, « established according to the laws of the National countries ». That is a matter of wording and the President proposed that the above amendments may be submitted to the Bureau, as they were not amendments touching matters of essential principle, and the Bureau might consider, after obtaining the necessary information, whether it was advisable to embody them.

SIR WILLIAM PICKFORD. — Mr. President and gentlemen, it has been suggested to me by some of the Delegates from my country that a Resolution of this description may be of use with regard to this matter. It is an important question what system of publication or validation should be adopted. The Delegate from the Argentine Republic has suggested words which, so far as I can see, at the moment, would not be satisfactory, and for this reason, that an unregistered mortgage in England is valid. Without going into the details as to the drawbacks, it has drawbacks, but it is valid and I am afraid that those words, if adopted, might lead to this, that an English unregistered mortgage might get a precedence that it ought not to have. Therefore I think there may be difficulties with regard to the wording of each proposition that has been proposed and I will suggest that the Conference should pass this Resolution :

« The Conference is of opinion that steps should be taken to establish in every country a simple means of registration and publication of mortgages and hypothèques, mortgages, gages sur navires, and that the National

Associations should, in the meantime, report to the Permanent Bureau the existing legislative and administrative means of registration and publication in each country ».

It seems to me the result of that would be that this, being in great measure a matter of drafting, would properly be referred to the Permanent Bureau. If this Resolution were adopted and acted upon they would enter into the consideration of the matter with the full knowledge of all the existing methods of registration and publication and could indicate what, in their opinion, would be the best general system to be adopted. (Loud applause).

(*Traduction orale par* M. Louis Franck).

M. Pickford, tout en approuvant le texte tel qu'il est, propose une résolution générale dont je vais vous donner connaissance et qui, dans sa pensée, serait de nature à faciliter la tâche du Bureau Permanent pour l'examen de la question :

« **La Conférence exprime le vœu que les mesures nécessaires soient prises pour établir dans tous les pays un moyen simple de publication et d'enregistrement des gages, hypothèques et mortgages sur navires, et que les Associations nationales adressent dans l'intervalle au Bureau Permanent un rapport sur les mesures législatives et administratives qui existent dans leur pays respectif quant à l'enregistrement et à la publication des hypothèques.** »

(Assentiment général).

Dans la collection déjà longue de nos rapports, vous trouverez un travail remarquable de M. Cattier qui à cette date donnait les systèmes législatifs des pays de l'Europe et hors d'Europe en matière de responsabilité des propriétaires de navires. C'est un travail de ce genre qu'il conviendrait de faire.

M. Galibourg. — En indiquant les modifications encore possibles.

Mr. Bisschop (London). — At the same time that this resolution is being adopted I should like to point out that in

the first Article no mention has been made as to which mortgages shall take priority over other mortgages, and according to what system the mortgages shall take priority over each other. I think it is absolutely necessary that this should be provided for in the International Code, because in different countries there are different systems. The Continental countries are in this respect opposed to the law of England with regard to general mortgages. General mortgages take priority in England according to the date upon which the money has been advanced : on the Continent — in France and in Belgium at any rate — they take priority according to the date of registration; they are independent of the time when the money has been advanced. I think that one general rule should be adopted in an International Code in order that there should be no difference according to the country in which the mortgage has been registered. I think if the Continental system were adopted, and the registration itself gave also the date of the mortgage, that would be the best and the clearest system; because then, by reason of the Register being public, it could be ascertained at any moment at what time any mortgage has been entered upon, and from what date it would take priority. I should like to leave it to the Permanent Bureau to put that into the redaction of Article 1 ; and I only draw attention to this point in order that it should not be overlooked. It is a point in which there is a great difference between different countries, and therefore it is a point which should be settled. It is a matter of the greatest importance, because with regard to Great Britain for instance, according to the decision of the Privy Council which was given in July of this year, the mortgages are to take priority according to the date upon which the different sums have been advanced. That has been decided as being the rule for all the Colonies of

Great Britain, where the decisions of the Privy Council govern the law. For that reason I think it would be of great assistance if in the International Treaty that point were settled for all countries in the same sense.

(*Traduction orale par* M. Louis Franck).

M. Bisschop a fait remarquer qu'il serait bon de spécifier dans l'article I les règles qu'on suivra en ce qui concerne le droit de préférence entre les diverses hypothèques. Sur le Continent, on considère la date à laquelle l'hypothèque a été enregistrée, tandis qu'en Angleterre, c'est la date à laquelle l'argent a été avancé.

M. AUTRAN PREND LA PRÉSIDENCE.
M, AUTRAN IN THE CHAIR.

Article II.

Les droits mentionnés dans l'article précédent sont primés par les privilèges.

Maritime liens shall take precedence of the rights mentioned in the last preceding article.

M. Autran (*président*). — C'est un principe admis partout.

(*D'accord. — Agreed*).

Nous passons donc à l'article III.

Article III.

Sont privilégiés, dans l'ordre suivant, sur le navire, les accessoires du navire et le fret du voyage pendant lequel est née la créance privilégiée (vide art. 2 et 3 du traité sur la responsabilité de navires) :

1° Les frais de justice, taxes et impôts publics, les frais de garde et de conservation.

The following liabilities shall give rise to maritime liens on a ship, her accessories and freight due in respect of the voyage in the course of which the liabilities arose, and shall take rank in the following order (see arts 2 and 3 of the draft-treaty on the liability of shipowners).

1° Court fees, taxes and public

2° Les gages du capitaine et de l'équipage depuis le dernier engagement, mais avec, au plus, une durée de six mois ;

3° Les indemnités dues pour sauvetage et assistance ;

4° Les indemnités dues à un autre navire, à sa cargaison, à son équipage ou à ses passagers, à raison d'un abordage ou de tout autre accident résultant d'une faute nautique du navire.

charges and the expenses of warehousing, watching and preservation.

2° The wages of the master and crew since the date of the last signing on up to a maximum of six months wages.

3° Money due for salvage.

4° Money due to the owners of another ship, or of her cargo or to her crew or passengers in respect of a collision or other accident arising from some act or default for which the ship is to blame.

M. AUTRAN, (*président*). — J'appelle tout particulièrement l'attention de la conférence sur cet article. Vous n'avez pas oublié, en effet que que la solution qui sera donnée au principe si important de l'article 2 de l'avant-projet de traité sur la Limitation de la Responsabilité, dépend dans une très large mesure du vote que vous émettrez sur cet article, et vous n'avez pas oublié la déclaration qu'a faite tout à l'heure M. Simpson au nom des banques anglaises qu'il représente, à savoir que dans l'intérêt du crédit maritime, il y a lieu de restreindre autant que possible le nombre des privilèges. N'oublions pas que dans nombre de législations continentales, le nombre des privilèges est considérable. Je crois qu'il y en a 14 en Belgique, il y en a 11 en France et pour la plupart, ils correspondent à des situations qui n'ont plus de raison d'être par suite de la facilité et la rapidité des communications télégraphiques, les cables sous-marins, etc.

Il ne peut y avoir de difficultés sur les frais de justice, taxes et impôts publics, frais de garde et de conservation.

2° Les gages du capitaine et de l'équipage. — Il paraît

bien certain que ces gages doivent être privilégiés, puisque les matelots sont indispensables à la conduite du navire.

M. Galibourg, m'a fait remarquer qu'on n'avait pas mis au rang des créances privilégiées le salaire des pilotes. Dans ces conditions, il propose d'ajouter : « les salaires des pilotes ». Si sur cette question quelqu'un veut prendre la parole...

M. LEFEBVRE. — Le pilote est payé toujours immédiatement.

M. GALIBOURG. — Et s'il n'est pas payé au débarquement ? Remarquez cependant que le pilote est absolument indispensable. S'il n'est pas payé immédiatement — il se peut que le navire soit à court d'argent, voilà donc un homme qui fait partie de l'équipage, mais n'étant pas porté sur les rôles d'équipage, il ne pourrait, aux termes du paragraphe 2 de l'article 3, réclamer un payement quelconque et il serait exposé à ne pas être payé. En cas de danger pour le navire, n'étant pas sûr d'être payé, il pourrait hésiter à se rendre au devant des navires pour faire son service. C'est cependant un homme intéressant pour les services qu'il rend et les dangers qu'il court. Du reste, c'est un privilége d'une importance bien petite. Je demande donc que la conférence inscrive ce privilége sous le même paragraphe.

M. LOUIS FRANCK. — M. Galibourg has said that the salary of the Pilot ought to be included in the wages. For my part, as far as my opinion may have any weight, I am adverse to any addition of that kind. If we are going on the very simple system of reducing the number of liens, and then to introduce small matters of this sort there will be no end to them. The Pilot is quite in a position to have his pay assured to him : a ship would not be allowed to

leave without the Pilot being paid, and I have never heard of a Pilot having any difficulty of that sort, so that M. Galibourg may be quite sure that his protégés will get their money as before.

M. LOUIS FRANCK. — J'avais l'honneur de dire ceci : Le pilote est protégé par l'Administration dans la plupart des pays et on ne permettrait pas à un navire de partir sans payer le pilote.

En principe, si vous voulez un système simple et pratique, de grâce, ne parlez pas de ces petites créances.

M. GALIBOURG. — C'est cependant un membre de l'équipage, quoiqu'il ne soit pas inscrit sur le rôle d'équipage.

M. LEFEBVRE (Alger). — En ce qui concerne les gages du capitaine, il me semble nécessaire d'établir que quand le capitaine serait déclaré en faute, il sera déclaré déchu de ce droit à des gages.

Plusieurs Membres. — Non, non ! C'est un tout autre ordre d'idées.

M. BROWN (New-York). — M. President and Gentlemen of the Conference, the Article that you are now considering is one that in the opinion of the American delegation seems to be very much misconceived. It seems to us that the policy which this Article adopts is one that is not wise and is not just. It loses sight of what we regard to be one of the cardinal principles of maritime law, and that is the adoption of such a policy as shall give wings to vessels to plough the sea, and not to rust on the wharves. In other words it seems that this Article is prepared for the protection of mortgages, and not for the protection of

those persons who have advanced money, made repairs, and furnished supplies to vessels. We consider the subject a very important one for this reason — the Unites States is not a ship-owning country, owning ships in the foreign trade, to any great extent. It is rather a country to which ships come very frequently, and which has very nearly 40 per cent of the entire commerce of the world. Ships that come to our country have to be repaired very frequently. Some gentleman has questioned the accuracy of my figures. Well, perhaps I am wrong in my figures, but those are the figures supplied to me by the State Department. The point I wish to make is that our commerce is a very considerable commerce, and that we are a nation of cargo owners, and not a nation of ship owners; but that the ships that come to our shores have to be repaired, and we have many dockyards and repair establishments; and the policy of our country will almost certainly be directed to protecting those persons who effect repairs and give supplies to vessels. I might say in explanation of my point, and in order to show the public policy of my country, that the Supreme Court of the United States have held for many years that supplies and repairs to foreign vessels are protected by according to them presumptively a maritime lien; whereas supplies and repairs to domestic vessels are not so protected. However, that principle, adopted by our highest Court, has not found sanction in the majority of our people who have desired that the lien should extend much further than that; and it has accordingly resulted that in nearly all the States of the Union, Statutes have been passed which confer upon persons effecting repairs, or furnishing supplies to vessels, liens, which the Admiralty Courts have recognised as Maritime liens, and have enforced as such. I call attention to these facts, not as a foundation for an argument as to which is the wisest policy

primarily, because I realise that that question has already had your full consideration; but I call attention to them for the purpose of emphasising what sort of treaty can possibly find acceptance in the United States.

Mr. LESLIE SCOTT. — I should mention that this has not been considered before by the Conference. It is only the sub-Commission of Paris that has considered it.

Mr. BROWN. — I am much obliged. I want also to say that it seems to us that the order in which the liens take their precedence might advantageously be somewhat altered. I have therefore an amendment to propose to Article 3 which is as follows : In the first paragraph of the Article insert the words «arising upon the same voyage». We think a discrimination ought to be made according to whether the liens arise upon the same or upon different voyages. The first paragraph therefore would read as follows :

« THE FOLLOWING LIABILITIES, ARISING UPON THE SAME VOYAGE, SHALL GIVE RISE TO MARITIME LIENS :

1° JUDICIAL COSTS, TAXES, PUBLIC DUES;
2° WAGES OF MASTER AND CREW ;
3° EXPENSES MADE FOR THE CONSERVATION OF THE VESSEL ;
4° CLAIMS FOR SALVAGE ;
5° CLAIMS FOR COLLISION ;
6° BOTTOMRY ;
7° SUPPLIES AND PROVISIONS ;
8° CLAIMS OF THE CARGO ;
9° MASTER'S DISBURSMENTS. »

(*Traduction orale par* M. LOUIS FRANCK)

M. Brown estime qu'en se plaçant au point de vue de la nation américaine, qui est plutôt propriétaire de cargaisons, réparateur de

navires, qui fournit aux navires des charbons et autres approvisionnements, le traité, tel qu'il est proposé, ne donne pas satisfaction. Il conviendrait d'ajouter toute une série d'autres priviléges, et il propose l'amendement suivant à l'article :

1) Frais de justice, taxes, impôts publics ;
2) Gages de l'équipage ;
3) Les dépenses pour la conservation du navire ;
4) Créances pour sauvetage ;
5) Créances du chef d'abordage

de sorte que jusqu'ici, l'honorable délégué des Etats-Unis est d'accord ; mais ensuite, il propose :

6) Bottomry. Lettres a la grosse ;
7) Fournitures et approvisionnements ;
8) Réclamations de la cargaison ;
9) Débours du capitaine.

M. Sieveking (Hambourg). — Mr. Chairman and Gentlemen, before we are able to discuss and to vote for the abolition of the one or the other lien I am compelled, on behalf of our Association, to put to the formal vote of the Conference the principle which I have already pointed out to you — that is, that in every case where a shipowner's liability is limited, a lien should be granted to the creditor. I think this principle is not only logical, but should be acted upon. I can understand the importance of the fact whether we act upon this principle or not. If you say, « No, it is not necessary that a creditor towards whom the owner is only liable to the extent of ship and freight, should have a lien », then we can discuss this Article 3 of this Treaty without any reference to Article 2 of the Treaty relating to Shipowners liability. But if you admit that this principle is right and should be acted upon, we cannot discuss this Article 3 without discussing Article 2 of the other Treaty.

Now let me take the case of a creditor who advances money to the ship for necessaries, we will say a sum of

£ 500 or £ 1,000. We would admit that in such a case eventually the owner would be personally liable; but as the law now stands in Germany, — and as I hear other Associations want to propose — in such cases the owner would only be liable to the extent of ship and freight. Well if you say that the owner is only liable to the extent of ship and freight, the creditor who advances the money has no remedy, but against the ship; and if for instance after he has advanced the money, the ship collides with another vessel — say with a big Atlantic liner — running her down through the first named ship's fault, then the owner of the atlantic liner simply takes the ship for the collision debt, and the creditor who advances the money has nothing. He cannot sue the owner personally, because the owner's liability is limited; and he cannot take remedy against the ship, because the ship has been taken away by the collision creditor. I think that is absolutely unfair. Of course it is quite another question if we have settled this principle in one way or the other. If we can abolish a great number of instances of limitation as our British friends want to do, perhaps we can abolish every lien; but then we must give the creditor the right of suing the owner personally. Therefore I want to put the formal vote of the Conference a resolution as to whether it is necessary in a case of limited liability to give the creditor a lien or not.

(*Traduction orale par* M. Leslie Scott)

M. Sieveking vient de dire qu'au point de vue de la délégation allemande, il doit soumettre à la Conférence une question de principe d'abord : C'est que quand on limite la responsabilité de l'armateur, on doit en même temps donner aux créanciers envers lesquels cette limitation est admise, un privilége ; que ces deux choses doivent toujours aller ensemble ; s'il y a limitation, il doit y avoir privilége. Par conséquent, dit-il, si la conférence accepte le principe que le

privilége doit exister là où il y a limitation, il est nécessaire de discuter l'article 3 du code sur les privilèges en même temps que l'article 2 du code sur la responsabilité. Au cas contraire, c'est-à-dire, si la conférence décide qu'il n'y a pas de relation entre la limitation de responsabilité et les priviléges, on peut discuter cet article séparément, et il désire donc savoir quelle est l'opinion de la Conférence au sujet de cette question de principe. Il donne, comme exemple, le cas d'un homme qui fait l'avance des approvisionnements ou a pourvu le navire de charbons pour un montant de £ 500. Pendant le voyage. un abordage se produit et le navire en question est en faute. Les créanciers du navire abordé absorbent toute la valeur du navire abordeur, de son fret et de ses accessoires, et il ne reste rien pour la créance du fournisseur de charbons et de provisions. En Allemagne, ce créancier n'a pas de recours personnel contre le propriétaire de navires. Il est donc d'avis que ces personnes doivent avoir un privilége au même titre que le navire abordé.

M. Sieveking a enfin dit que la délégation allemande consent à supprimer tous les priviléges si l'on supprime également la limitation de la responsabilité, mais il pense que les deux doivent toujours marcher de pair.

M. ALFRED SIEVEKING (Hambourg). — Permettez-moi de faire une petite correction à la traduction de M. Scott. Je n'ai pas dit que nous consentirons à abolir tous les cas de limitation, mais j'ai dit que nous consentirions peut-être à abolir beaucoup de cas de limitation de responsabilité si on supprimait les priviléges correspondants.

* * *

I want to correct one word of Mr. Scott's translation. I said only that we might perhaps consent to abolish many of the instances of limitation of liability, if the corresponding liens disappeared.

M. LOUIS FRANCK (Anvers). — De sorte que si je comprends bien l'idée de M. Sieveking, c'est que si vous

supprimez les priviléges, vous rendez d'autre part l'armateur personnellement responsable.

M. BUDENICH. — Nella mia qualità di vicepresidente dell' Associazione marittima di Trieste e quale capitano di lungo corso in ritiro, sento in dovere di esprimere in mio nome e se mi è concesso anche in nome della grande famiglia marinara, i più sensiti ringraziamenti all' onorevole commissione di Parigi del 1906, per la graduatoria accordata nelle paghe dell' equipaggio e del capitano.

Dopo ciò, in nome mio e dei miei colleghi della deputezione e del comitato austriaco, mi dichiaro pienamente d'accordo col punto secondo dell' art. 3 per quanto concerne le paghe del capitano e dell' equipaggio per l' ultimo ingaggio.

Però is mi permetterei proporre un emendamento al progetto per questo privilegio. Il progetto in presentazione limita la durata al massimo di sei mesi. Questo, secondo la mia debole opinione e secondo il parere dei miei colleghi, è assolutamente troppo poco, e menoma la tranquillità di coloro che espongono la loro vita alla perigliosa e disagiata vita marittima per la conservazione del bastimento sul quale sono imbarcati. E perciò, a titolo di giustizia, a titolo di equità, proporrei che fosse conservata la durata già prevista dall' *avant-projet* di Liverpool.

Ritengo che questo non pregiudichi la posizione, in quanto che non si è stabilito che si debbano accordare 12 mesi di paga. Soltanto pel caso in cui l'ingaggio potesse avere una durata più lunga, io troverei giusto ed equo che il capitano e l' equipaggio conservassero privilegio per le loro fatiche, per i loro stenti, per le cure da esse avute a vantaggio del bastimento sul quale si trovavano imbarcati.

Voglio entrare nelle intenzioni dei signori che hanno proposto il limite di sei mesi. Indubbiamente tali signori avranno considerato che colla navigazione a vapore, oggi

tanto estesa, il termine di 6 mesi possa essere considerato sufficiente. Ma anche tenendo conto di questa considerazione, io sono d' avviso che il termine di sei mesi sia insufficiente. Noi abbiamo il vantaggio di trovarci circondati da parecchi armatori e capitani, i quali converranno nella mia opinione che realmente un periodo di sei mesi, anche per un battello a vapore adibito alle lunghe navigazioni, sia assolutamente insufficiente. Per avvalorare il mio asserto, accenno anche ad un principio di moralità : quello di assicurare le paghe all' equipaggio.

(*Traduction*)

En ma qualité de vice-président de l'Association maritime de Trieste, et de capitaine au long cours en retraite, je crois qu'il est de mon devoir d'exprimer — en mon nom et s'il m'est permis d'ajouter également au nom de la grande famille des marins, — les plus sincères remerciments à la Commission de Paris de 1906, pour le rang privilégié qu'elle a accordé aux gages de l'équipage et du capitaine.

Ensuite, en mon nom personnel comme au nom de mes collègues de la Députation et du Comité hongrois, je me déclare complètement d'accord avec le 2° de l'article 3 en ce qui concerne les gages du capitaine et de l'équipage pour le dernier voyage.

Mais je me permettrai de proposer un amendement au projet. Celui-ci limite la durée à six mois. A mon avis, et dans l'opinion de mes collègues, ce délai est absolument trop court et diminue les garanties de ceux qui exposent leur vie dans le métier de marin, aussi dangereux que pénible, pour la conservation du navire sur lequel ils sont embarqués. Pour ce motif, au nom de la justice et de l'équité, je propose de nous en tenir à la durée déjà prévue dans l'avant-projet de Liverpool. Je crois que cela ne préjudicie en rien la situation puisque cela ne veut pas dire qu'il faut accorder 12 mois de gages. Seulement au cas où l'engagement peut avoir une durée plus longue, je trouve qu'il serait juste et équitable que le capitaine et l'équipage conservent un privilége pour leurs fatigues, pour leurs efforts et pour les soins qu'ils ont donnés au navire sur lequel ils étaient embarqués.

Sans doute, les membres qui ont proposé la limite de six mois auront considéré qu'avec la navigation à vapeur, qui a pris aujourd'hui

une si grande extension, le délai de six mois est suffisant. Mais tout en tenant compte de cette considération, je suis d'avis que le délai de 6 mois est insuffisant. Nous avons l'avantage d'avoir autour de nous plusieurs armateurs et capitaines, et ceux-ci partagent mon avis que réellement une période de six mois est absolument insuffisante, même pour un navire à vapeur qui fait le long cours.

A l'appui de ma proposition, il y a encore un principe de morale ; c'est d'assurer le payement des gages de l'équipage.

M. Louis Franck (Anvers). — Je pense, Messieurs, que nous avons fait aux gages de l'équipage une situation très équitable. Nous les avons mis au second rang, pour des raisons d'humanité alors que pour des raisons de logique, il aurait peut-être fallu faire passer le sauvetage avant; mais noùs avons considéré qu'il fallait mettre l'équipage en premier lieu. Seulement, dans ces conditions, il me semble que les équipages et les officiers doivent se contenter d'un délai de six mois. Il y a d'autres intérêts que les leurs. Ils doivent considérer que si les voyages durent plus de six mois, il est rare qu'ils n'aient pas reçu d'avance. Il y a en tout cas la préoccupation dominante de sauvegarder le crédit maritime.

M. Budinich. — I colleghi francesi possono apprezzare lo sviluppo della marina veliera francese di lungo corso; così gli inglesi, gli suedesi, ecc.; e realmente credo che il periodo di sei mesi sia assolutamente insufficiente per tranquillizzare le persone che espongono la loro vita per la conservazione del bastimento.

(*Traduction*)

Nos collègues français peuvent apprécier le développement qu'a pris la navigation à voiles qui se livre au long cours; de même les Anglais, les Suédois, etc. et réellement, je crois que le délai de six

mois est absolument trop court pour tranquilliser les personnes qui exposent leur vie pour la conservation du bâtiment.

M. ENRICO BENSA. — Mr. President and Gentlemen, What I am going to say is specially interesting to our English colleagues ; and so I take the opportunity of speaking in my bad English. I notice that in Article 3 the Wages of Master and crew are given preference over money due for salvage. I gather from the report of Mr. Phillimore that according to English law and practice the salvage is prior to the Wages of Master and crew ; and that is the system of our Italian law ; and I think it is the system in almost all maritime legislation. I do not see that there is really any reason for this postponement and I should like to know the opinion of our English colleagues as to this postponement which is considered insufficient for the wages of the crew as you have understood from M. Budinich who complained because only six months were allowed, and not twelve months. This postponement seems to me illogical and of a natnre which would not meet with the approval of the Diplomatic Conference. I think in this respect it would be quite right if in England they should stick to their old motto of « *Nolumus leges Angliæ mutare.* » I should like to know whether there is a probability that this system, which I cannot help calling an illogical system, is likely to succeed.

(*Traduction orale par* M. LOUIS FRANCK)

M. Bensa pense quant à lui que le créancier du chef d'assistance, ayant conservé le gage commun, devrait passer avant l'équipage.

M. LOUIS FRANCK (Anvers). — Je me permets de répondre. En admettant ce privilége, d'une équité absolue, ne lui donnons que six mois de préférence, mais gardons-

lui le second rang. Pour l'assistance et le sauvetage, il restera toujours quelque chose.

Je prie M. Bensa de ne pas insister.

M. B. C. J. LODER (Rotterdam). — Je ne puis dissimuler que j'ai entendu avec quelqu'étonnement le discours de M. Sieveking. Il dit qu'en Allemagne, on est d'opinion que la solution de l'une des questions dépend de ce qu'on décidera sur l'autre. Et alors il nous dépeint sous des couleurs sombres la position de certains créanciers, à l'avenir. Cela m'étonne, car la situation des créanciers, si l'on accepte les deux projets, sera la même que celle qu'elle a toujours été dans le monde entier. Et ce qu'il vient de nous proposer n'existe dans aucune loi, pas même dans la sienne. D'ailleurs, tous les pays, l'Allemagne aussi, veulent restreindre les priviléges dans la mesure du possible et si nous devions venir devant les puissances avec une proposition pareille à ce que M. Sieveking nous demande, je crains qu'aucune ne l'accepterait.

M. Sieveking dit que, si on n'accepte pas sa proposition, il pourrait être obligé de combattre les projets tels qu'ils sont. Mais ce qu'il veut est contraire à ce qui se passe dans toute l'Europe. Le système des avant-projets, quant à la pensée fondamentale, est conforme à l'opinion continentale actuelle.

Enfin, je me permettrai de faire observer que ce que M. Sieveking a dit maintenant est aussi contraire au vote de l'Allemagne à la Commission de Paris, où les idées qu'on vient de développer aujourd'hui, n'ont pas été énoncées.

Aussi, je ne crois pas que la situation du consignataire soit si sombre qu'on nous la dépeint, s'il a quelque chose a réclamer. Il arrêtera le navire, et on a toujours cru qu'il

pouvait faire cela sans privilège, même avec la responsabilité restreinte.

Quant à moi, je regrette beaucoup qu'on nous pose la question comme cela. Cela nous met dans une difficulté bien grande.

(*Verbal translation by* M. L. FRANCK).

M. Loder has submitted that there is no reason to adopt the general resolution as proposed by Dr. Sieveking. His opinion is that whereas all Nations, or nearly all Nations, represented here appear to be favourable to a new regime by which the liens would be as far as possible restricted in number so as to give a sound basis to Maritime credit, it appears unnecessary to lay down a general principle which is contrary to the general rules existing all over the world, and which seems contrary to the views which Dr. Sieveking himself adopted at the sitting of the Paris Commission.

M. HARRY RISCH MILLER (London). — I wish to put before the Conference, M. President, what occurs at the present moment in practice with regard to this matter; because I venture to think there is some confusion in the minds of the Conference as to what at present occurs; and perhaps it would be wise if this Conference had before them the results of practical experience rather than academic views. I venture to think we may perhaps clear the air if we just remember what actually takes place in practice with regard to these liens. Let us take the case of a small shipowner who has only one ship and that vessel meets with very serious damage and has to be repaired. Obviously a man of small financial means cannot pay for the repairs without some assistance. Now let us think what takes place. The repairer does not lose his money, and for this simple reason — because if a vessel takes we will say a week or a fortnight to repair, during that time the invariable practice amongst such men is for them to go to their

Underwriters and say to their Underwriters : « Gentlemen, my ship is at present in the Port of Genoa ; she is undergoing repairs at Genoa. The bill for this will amount to £ 3,000. I want the money. » Thereupon the Underwriters say, « Give us a letter from your Average Adjuster and we will advance the money ». That is the practical outcome of all these things — the repairer does not lose his money — the owner gets his money from the Underwriters, and it is transmitted by telegram before such and such a date at which the ship has to sail. (*Applause*). Therefore these liens although they may be of academic value are not in practice of any value at all. I lay that view before the Conference in order to shew them what actually happens when matters arise such as we have been discussing, and I have done so because I thought it would be an advantage for the Conference to know it.

(*Traduction orale par* M. LOUIS FRANCK).

M. Miller signale à la conférence qu'il faut tenir compte dans la loi, de ce qui se passe dans la pratique. L'armateur qui a une réparation d'avaries à faire effectuer s'adresse à ses assureurs et il dit : vers telle date, il me faudra tel montant. Et l'assureur, sur une lettre du dispacheur, ou après une vérification, fournit les fonds ou donne une garantie, et on ne permet pas au navire de quitter le port avant d'avoir payé sa dette. Par conséquent, la valeur du privilégé, grande en théorie peut-être, n'a aucune importance en pratique.

M. LOUIS FRANCK (Anvers). — S'il m'est permis d'ajouter un mot.

M. Miller a mille fois raison. Le mal n'arrive que lorsqu'il y a des commerçants qui laissent le navire se grever de charges et de frais jusqu'à la corde. Et ceux-là ne m'intéressent vraiment pas.

M. BROWN (New-York). — The information that I have gained from an Admiralty practice extending over a good

many years is entirely in accord with the statement made by the last speaker Mr. Miller. Nevertheless I think Mr. Miller loses sight of the fact that the number of exceptions in these cases are so frequent that they must be taken into consideration. It is the fact that a very large part — a part that is well worthy of the consideration of this Conference — of the litigation in the Admiralty Courts of the United States arises from the very fact that the Underwriters are not so liberal as they are represented to be according to the custom outlined by Mr. Miller; and unfortunately it has been found necessary in the United States to enforce these liens very frequently, and our Admiralty Courts are burdened with such suits. I think therefore a lien is necessary for the protection of the supplying man and the repairing man in such cases.

Dr. G. Martinolich (Trieste). — Sarò breve nell' esprimere l' opinione dei miei colleghi dell' Associazione Austriaca.

Fra gli argomenti che vengono portati in campo per l'estensione dei privilegi, ve ne sono alcuni che hanno del peso effettivamente, ma noi crediamo che siano tanti i motivi per non accordare questa estensione ed accettare il progetto di Parigi, che voteremo per questo progetto.

I privilegi marittimi principali sono specificati all' art. 3. Noi conosciamo la natura del privilegio: quella cioè di recare una sorpresa agli interessati, a coloro che accordano il credito marittimo. Ed in oggi, collo sviluppo che prende la marina mercantile, sarebbe assai dannoso per essa che si volesse estendere il numero dei privilegi. Sarebbe poi un male molto maggiore se venisse diminuito il credito. Ed il credito, o la possibilità del credito, verrebbero certamente diminuità coll' aumento dei privilegi e colla loro estensione.

Crediamo, dunque, che non sia bene per quanto vi siano motivi che parlano in favore, d' estendere i privilegi marittimi ; e siamo del parere d' accettare il progetto di legge come presentato a Parigi. Quindi noi siamo d'accordo per l'art. 3.

(*Traduction*)

J'exprimerai très brièvement l'opinion de mes collègues de l'Association autrichienne.

Parmi les arguments qui ont été mis en avant en faveur de l'extension des priviléges, il en est quelques-uns ayant une valeur réelle ; mais nous pensons d'autre part qu'il y a autant de motifs pour ne pas accorder cette extension et d'accepter le projet de Paris, que nous voterons pour ce projet.

Les priviléges maritimes principaux sont spécifiés à l'article 3. Nous connaissons l'inconvénient du privilége : c'est notamment de réserver des surprises aux intéressés, à ceux qui accordent le crédit maritime. Et aujourd'hui, en présence du développement de la marine marchande, il serait dangereux d'étendre le nombre des priviléges. Ce serait un mal bien plus grand encore si le crédit maritime devait s'affaiblir. Or, tel serait certainement le cas s'il fallait augmenter et étendre les priviléges.

Nous croyons donc que, quels que soient les motifs en faveur d'une extension des priviléges maritimes, pareille extension serait dangereuse ; et nous sommes d'avis d'accepter le projet de loi tel qu'il a été rédigé à Paris. En conséquence, nous nous déclarons d'accord sur l'article 3.

M. Denisse. — M. Sieveking a dit tout à l'heure qu'il y avait une corrélation étroite et intime entre tous le cas où le propriétaire est responsable et les créances qui doivent être garanties par un privilège, demandant que tous les créanciers envers lesquels le propriétaire de navire peut opposer une responsabilité limitée soient en même temps déclarés privilégiés. Je crois, Messieurs, que sans devoir inscrire pareille disposition dans notre texte, ces créanciers peuvent arriver à un résultat analogue et que l'intérêt

pratique de la question est assez minime. C'est qu'en effet, tous ces créanciers auxquels on peut opposer une responsabilité limitée, peuvent faire saisir le navire. De deux choses l'une, ou bien le navire, par suite de l'accident, sera coulé. aura péri ; ce navire n'aura plus de valeur. Dans ce cas, évidemment le propriétaire ne donnera pas caution. Mais à quoi servirait-il dans ce cas d'accorder un privilège ? Il serait sans effet et sans utilité. D'autre part, au contraire si le navire n'a pas péri, s'il a conservé sa valeur, il y a toutes les chances pour que l'armateur ne le laisse pas saisir ; l'armateur fournira caution, et en vertu de cette caution, le créancier sera désormais parfaitement garanti. Cette caution lui assure le payement intégral et peu lui importera par suite qu'il y ait ou non des hypothèques sur le navire. Ces hypothèques lui seront étrangères puisqu'il aura obtenu caution.

Je crois donc que cette faculté pour le créancier d'opérer la saisie du navire et d'exiger caution donne des garanties suffisantes, d'autant plus que dans le texte qui a été adopté, il a été décidé que cetie caution ne peut plus être affectée par les évènements postérieurs.

(*Traduction orale par* M. Louis Franck)

The speaker has said that one wants to look at this question not from an academical but from a practical point of view, and that one should not lose sight of this fact — that the creditor has always the right to arrest the ship, and that in the regular course of business in such cases whatever may be the mortgages and liens of people who are not at that moment at that Port. the man who arrests the ship gets bail and is paid out of the bail and leaves the others to seek their rights as best they can. And as long as that privilege remains in all Nations (as it does) we need not fear that taking away these liens will put the man who is on the spot in any awkward position.

Dr. Ant. Vio (Fiume). — Vi è un principio di giustizia

e di equità che vuole che tutti i crediti pei quali è stata accettata la limitazione della responsabilità, debbano anche avere un diritto privilegiato. Io non ammetto che vi possa essere una limitazione di responsabilità per l'armatore, se non esiste un diritto privilegiato pel creditore.

Vi potranno essere dei crediti che oltre il diritto di privilegio avranno anche un diritto personale verso l'armatore ; ma non vi possono d'altra parte essere dei crediti compresi nella limitazione della responsabilità e che non abbiano un diritto privilegiato.

Noi abbiamo l' art. 2 che dice che il proprietario del naviglio risponde limitatamente per tutti i danni cagionati ai beni, alle merci ed a tutti gli altri oggetti che si trovano a bordo del naviglio. Ora tutti i danni alle merci ed agli altri oggetti che si trovano a bordo del naviglio, non gli trovo fra i crediti privilegiati, mentre trovo fra i crediti privilegiati i danni recati alle merci del terzo naviglio, agli oggetti del terzo naviglio. Siccome sarebbe, a mio modo di vedere, fuori del buon senso, l'accordare diritto di privilegio ai danni recati alle merci di terze navi, propongo che questo articolo sia completato nel senso che non solo i danni arrecati alle terze navi abbiano diritto di privilegio, ma che tale diritto debba spettare pure ai danni delle merci, oggetti ed altre cose che si trovavano a bordo del bastimento.

(*Traduction*)

Il est un principe de justice et d'équité qui exige que toutes les créances pour lesquelles on admet une limitation de responsabilité, doivent également avoir un droit de privilége. Je n'admets pas qu'il puisse y avoir une limitation de responsabilité pour l'armateur, s'il n'existe pas un privilége pour le créancier.

Il peut y avoir des créances qui, outre le droit de privilége, auront encore un droit personnel contre l'armateur ; mais il ne peut d'autre

part y avoir des créances qui tombent dans la limitation de responsabilité et qui n'aient pas aussi un droit de privilége.

Nous avons l'article 2 qui dit que le propriétaire de navire est responsable limitativement pour tous les dommages occasionnés aux biens, aux marchandises et à tous autres objets se trouvant à bord du navire. Or, tous les dommages aux marchandises et aux autres objets qui se trouvent à bord du navire ne se trouvent pas parmi les créances privilégiées, alors cependant que l'on admet parmi ces créances privilégiées les dommages occasionnés aux marchandises ou aux objets à bord d'un autre navire.

Comme, à mon avis, il serait contraire au bon sens d'accorder un droit de privilége pour les dommages causés aux marchandises à bord d'un autre navire, je propose de compléter cet article en ce sens que non seulement les dommages causés à l'autre navire auront un privilége mais qu'un privilége pareil devra être accordé également pour les dommages à la marchandise, aux objets et autres choses se trouvant à bord du bâtiment.

(*Verbal translation by* Mr. Leslie Scott)

Very shortly Sig. Vio proposed that there should be added in Article 3 of the Lien Code a lien for damage caused to goods and other objects on board the carrying vessel for which Sub-paragraph 1 of Article 2 of the Limitation Code extends the limitation, as in English law, apart altogether from collision ; and Sig. Vio proposes that there should be a privilege for such claims.

Mr. Cory (Associated Chambers of Commerce of the United Kingdom). — I feel, Sir, that possibly the English delegates represent principally the shipowners ; and although, speaking personally, the Company with which I am connected is deeply interested in Steamers, still we are primarily and perbaps more particularly interested in Cargo as Merchants. And therefore perhaps it is my duty, as representing the cargo-owners of the United Kingdom as well as the Associated Chambers of Commerce, to say a word or two from the point of view of the cargo-owner and the merchant. I am rather inclined to agree — partly, not wholly — with my friend Mr. Brown from the United

States that possibly liens are desirable, and that possibly the order of them might advantageously be re-arranged. I rather agree with him that the wages of the Master and Crew should possibly come before the expenses of warehousing, watching, and so on. Then I am rather inclined to agree with him that supplies and repairs (to a limited extent possibly, because otherwise in certain remote parts they might be very heavy and might be incurred to more than the value of the ship) should certainly form a lien on the ship and come before mortgages. And I think this is really in the interests of the shipowners and the mortgagees themselves. Supposing a steamer goes into a remote port like Diego Garcia, Secheyles, or Zanzibar, where no arrangement has been made by the owner for supplies, and that ship presents itself to a local French House for supplies and repairs, or, for instance, requires coal. Well, as Mr. Simpson has pointed out, the facilities to-day with regard to telegraphic instructions and getting credit sent out are very much greater than they used to be; but still those facilities do not apply so much to outstanding and remote Ports like those I have instanced; and even if it is possible to get them it entails delay and considerable cost in remote parts of the world. All the parties are interested in the ship, the owner as well as the mortgagee, and there are cases where acceleration of the voyage is of the greatest importance. Then if the ship cannot be got away from a remote port like those I have instanced she is of no value at all. The essence of her value is getting her back to home waters. Therefore it will facilitate the suppliers and repairers to grant credit from the fact that they will have a lien on the ship, and I think it is to the interest of the owners that the lien should be given. It is true they may refuse to give credit but then that means that the ship may be delayed there for some days or a week before

she can get away. I think that such protection is due to the suppliers and the merchants, and that there should be a lien, and I think also it is to the advantage of the mortgagee and the shipowner that such lien should be granted.

(*Traduction orale par* M. LOUIS FRANCK)

M. Cory a dit qu'à son avis il conviendrait d'ajouter aux priviléges énumérés, non pas tous les priviléges dont a parlé M. Brown, mais tout au moins le privilége en faveur de ceux qui ont fourni des provisions et effectué des réparations. Il accepte, comme M. Simpson l'a fait ressortir que la facilité des communications et les moyens d'obtenir du crédit à longue distance, ont beaucoup augmenté, mais cette règle n'est pas absolue. En outre, il faut tenir compte de ce qu'un navire peut se trouver dans un port éloigné, ou peu connu et qu'on se refuse à lui faire des fournitures parce que l'on n'aurait pas de privilége et que le navire peut être hypothéqué. Dans pareilles circonstances, même si un crédit peut être obtenu par voie de dépêche, cela occasionnera toujours un retard, des difficultés et l'intérêt de tous est de les éviter.

M. LOUIS FRANCK (Antwerp). — I might perhaps briefly say in answer to M. Cory that it is impossible to my mind to weigh in the balance such cases of particular interest as have been suggested against the general interest which attaches to the security and development of maritime credit. The claims for necessaries may extend to any length whatever (because it is impossible to define them) If you leave the door open for such claims against which you cannot insure and you allow them to take precedence of the mortgage, you take from the mortgage the confidence it wants and you consequently make credit dearer and perhaps impossible to obtain. The necessaries man can protect himself; the mortgagee cannot.

Mr. R. B. D. ACLAND (London). — Mr. President

and Gentlemen of the Congress, I have not intervened hitherto in the discussions of this Congress for this reason, that I am one of the lawyers who believe to the bottom of his heart that the questions which are to be discussed here are really business questions which must be settled by business men in a business way, and which ought to be settled as far as possible without the intervention of theorists and persons who are wedded to any particular system of law. We are attempting to settle a Code which shall be of use to business men ; which shall not be representative of any particular system but which shall enable business men to carry on business under identical conditions throughout the world. That involves a certain amount of give and take ; and I associate myself absolutely with the words which fell from my friend Mr. Franck when he addressed you a moment or two ago.

Now although I have not intervened in the debates I have been a very attentive listener especially during the last few minutes when this matter has been discussed from the business point of view. Mr. Miller has told us the practical way in which this question of repairs and advance in money works out, and he has insisted that it is not a real business difficulty which is raised ; and Mr. Brown entirely associates himself with that as a general principle but says that there are exceptions which make a lien desirable. In those circumstances I venture to ask the Conference whether it is possible that a body such as we are should legislate for exceptional circumstances ? The object which we have in view is to legislate or prepare a Code for the ordinary business and for the business which goes through in the ordinary way and not for exceptional cases. If once we begin to legislate for exceptional cases I venture to submit to the Congress that we should have a

Code so long and so impossible to understand that it would be absolutely useless.

Even as a lawyer therefore I venture to appeal to the Congress to be business like — to give and take where it is possible, and by not insisting upon exceptional cases, and by not insisting upon one's own pet theories of law, to try to work out a system which shall be of practical use to practical men in carrying on the practical commerce of the world.

(Traduction orale par M. LOUIS FRANCK)

M. Acland a dit en substance : Je ne suis qu'un jurisconsulte et je pense que ces questions doivent être avant tout tranchées par les hommes de la pratique, mais j'ai suivi la discussion avec attention, et le conseil que je me permets d'indiquer est que si l'on veut arriver en pareille matière à une solution, il faut s'attacher aux questions dominantes et d'intérêt général et non pas aux questions de détail ou d'intérêt particulier. Si nous devons faire un code international qui rencontre tous les cas exceptionnels, nous n'en finirons pas, et dans ces conditions, il recommande de n'y pas insister.

M. AUTRAN (*président*). — La parole est à M. Le Jeune.

M. CHARLES LE JEUNE (Anvers). — Il est certain que la dominante de cet avant-projet, c'est de bien établir le crédit maritime. Eh bien, Messieurs, si vous voulez faciliter le crédit maritime, vous devez l'établir dans des conditions telles qu'il soit viable ; que l'on puisse y avoir recours avec l'espérance que l'argent avancé au moyen de l'hypothèque maritime ne soit pas exposé à être perdu sans remède, que par conséquent, en arrêtant un ensemble de dispositions, vous ayez toujours en vue cette issue finale : l'intérêt de celui qui va prêter. Toute la situation est dominée par là, et si vous ne tenez pas compte de cette situation, si vous envisagez des hypothèses particulières, des difficultés devant lesquelles inévitablement on pourra

toujours se trouver dans une certaine mesure et si vous voulez parmi les privilèges, introduire une série de cas qui nous remettront devant la plaie des temps passés qui a complètement entravé le développement du crédit hypothécaire, nous n'aurons rien fait.

Messieurs les représentants de l'Allemagne ont fait une proposition qui dans sa généralité, embrasse a défaut de détermination, un nombre indéfini de privilèges possibles : mentionner que d'une façon générale auront privilège tous ceux auxquels on pourra opposer la limitation, ce serait établir un principe tellement vague qu'aucun prêteur ne pourrait apprécier les risques que lui fait courir son hypothèque.

Si lors du vote de l'article 2 du projet sur la Responsabilité, la délégation allemande croit devoir y revenir, elle aura l'occasion de nous dire de quelle façon plus précisée la responsabilité limitée pourrait être mise en harmonie avec les privilèges. Mais évidemment, une disposition aussi générale que celle proposée ne pourrait recevoir aucune sanction parce que ce serait ruiner complètement notre système de crédit maritime basé sur des privilèges définis. Je crois donc qu'il faut écarter la proposition allemande.

Restent les additions aux privilèges qui vous ont été demandées. Je ne m'occuperai pas de ces additions en détail ; mais je ferai une remarque : c'est que l'hypothèque, quand elle n'est précédée que de ce petit nombre de privilèges, acquiert une valeur qui permet au prêteur de faire garantir efficacement en cas de fortune de mer le remboursement par l'assurance des sommes qui lui sont dues. Il le pourra en effet, avec les privilèges tels qu'ils sont établis actuellement dans l'avant-projet et qui ne comportent que certains risques qui, pour la plupart, sont assurables. En avançant de l'argent contre une hypothèque

il saura avec un gage non encombré de privilèges et complété par l'assurance que s'il y a une perte par fortune de mer, il pourra recouvrer ce qu'il a avancé, parce que les risques sont assurables.

Et c'est là un point essentiel; c'est celui que signalait entr'autres l'honorable M. Simpson avec lequel je suis absolument d'accord.

Je crois donc qu'il serait bon de n'apporter aucune modification à ce qui a été proposé.

On a fait aussi remarquer que dans l'avant-projet les indemnités dues à un autre navire, à sa cargaison et ses passagers pour faits d'abordage sont privilégiées, alors que les indemnités dues à la cargaison et aux passagers du navire lui-même, lorsqu'il est en faute, ne le sont pas.

Voici ce qui nous a amenés à ces vues. Nous avons été d'avis d'abord que les obligations contractuelles créent un lien particulier entre les propriétaires du navire et ceux de la cargaison, et que les responsabilités qui en découlent ne peuvent être mises sur le même pied que celles envers des tiers innocents ; que par conséquent, il était raisonnable de ne donner un privilège qu'aux tiers. Avec les clauses d'exonération qui se trouvent actuellement dans tous les connaissements, cette exclusion se justifie à tous les titres.

Si M. le Président voulait, à l'heure qu'il est, nous poser une question décisive, le moment serait venu de prendre des résolutions sur l'article 3 ; et j'en propose l'adoption tel qu'il est conçu.

(*Verbal translation by* Mr. Louis Franck)

I will briefly translate what M. Le Jeune has said. He insisted first upon the necessity of getting a sound basis of maritime credit. He declared himself entirely in agreement with what has fallen from M. Simpson. He then put it before the Meeting that in his opinion the general principles as they were proposed by the German Delegation in an absolute way should not be put to the vote or accepted. He said

that due consideration ought to be given to the desirability of having harmony between the Treaty of Limitation of Liability and the Treaty of Hypothecations and Maritime Liens, but that that could not be laid down in an absolute form, an iron and fast rule that there should only be a lien where there was limitation, and that there should be no limitation where there was no lien. Each case must be considered on its merits. M. Le Jeune then pointed out that the main principle ought to be that for such creditors, to whom you are going to give a lien taking precedence of the mortgage. there should be the possibility for the mortgagee to insure; and that principle has been recognised in paragraphs 3 and 4 of Article 3 as proposed to the Conference. He submitted that the matter should now be brought to the vote and that Article 3 should be carried as it stands.

M. F. C. AUTRAN (*président*). — Je déclare la discussion close.

Quant à savoir comment on votera, il me semble que l'on pourrait voter en principe sur la question de savoir s'il y a lieu d'ajouter d'autres privilèges à ceux qui sont proposés par le texte que vous avez sous les yeux. Si par conséquent, vous admettez qu'en principe et sauf des modifications insignifiantes de détails, qui viendraient à leur place sous chaque paragraphe, il y a lieu de ne pas ajouter de nouveaux privilèges à ceux qui figurent dans le texte, vous écarterez ainsi par voie de conséquence les amendements proposés par la délégation allemande et l'amendement de la délégation américaine et, je le répète, sauf de légères modifications de détails, comme celles résultant de la proposition de M. Vio et d'autres collègues.

Au point de vue de la rédaction, il est bien entendu que le principe, c'est-à-dire, le plus de solidité du crédit maritime par suite de la réduction des privilèges, sera confirmé d'une façon absolue par ceux qui diront : « oui ».

Et ceux qui voudraient étendre le nombre des privilèges devront voter « non ».

(*Traduction orale par* M. LOUIS FRANCK).

The President has put to the Meeting the question in the following way : — Those who are in favour of accepting the principle that the only liens existing in these Treaties should be those enumerated in the draft prepared by the Paris Committee are to vote « Yes ». It is understood, however, that small modifications of detail on those four points are reserved — the vote being taken on this basis that you vote « Yes » if you are agreed that the categories of liens should be those four and no other. This would exclude the amendment of M. Brown, and the principles put forward by the German Delegation.

M. CRUZ (Buenos-Aires). — Nous allons adhérer au projet de la Commission de Paris en notre qualité de délégués de l'Association argentine de droit maritime ; mais nous n'entendons nullement par là compromettre l'opinion ou le vote du Gouvernement argentin, dont nous sommes également les délégués.

M. LOUIS FRANCK (Anvers). — C'est entendu ; c'est seulement en votre qualité de délégués de l'Association argentine que vous avez droit de vote.

Il me semble qu'il est très simple de s'en tenir à la proposition que faisait l'honorable président. La Commission de Paris propose quatre catégories de privilèges : les frais de justice et tout ce qui rentre dans cet ordre d'idées ; les gages et tout ce qui s'y rapporte ; les indemnités dues pour assistance et tout ce qui rentre dans cette catégorie ; enfin les indemnités dues à un autre navire ou à sa cargaison. Au point de vue de ce quatrième article, il y a un amendement du Dr. Vio à l'effet d'ajouter « et à la cargaison du navire transporteur ». Le Président ayant déclaré que comme il n'y a là aucune question de principe essentielle engagée, et que d'ailleurs cette ajoute pourrait se justifier à certains points de vue, cette question peut être réservée. Mais ce qui n'est pas réservé, et ce que ceux qui voteront

« oui » rejetteront ce sont des catégories nouvelles et différentes de privilèges, et notamment les réparations et provisions, les bottomry bonds et tous les privilèges de ce genre.

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The President was putting the matter to the vote in the following way. He said that there are four categories of maritime liens or privileges as settled in the Paris Report. Those who are in favour of limiting maritime liens to those four categories of claims against the ship are to vote « Yes ». It is understood that amendments of any of those four categories (or at least the one which was presented by M. Vio) are reserved. Those who vote « yes » will therefore adopt this system of settling the question of liens and will exclude other categories of liens, such as moneys advanced, necessaries, bottemry bonds, and so on.

VOTE

(L'article est adopté à la majorité).
(The article is carried by a majority).

M. F. C. AUTRAN *(président)*. — La proposition de la Commission de Paris est donc acceptée par une grande majorité. Il n'y a par conséquent plus qu'à examiner l'amendement de M. Vio qui trouvera sa place au paragraphe 4.

Cette question du privilège pour abordage a fait l'objet de nombreuses discussions et je dois dire que moi-même, j'avais toujours été l'adversaire résolu du privilège donné à l'abordé ; mais je dois dire que depuis la conférence de Hambourg, mes opinions personnelles se sont un peu modifiées et qu'à l'heure actuelle, je pense que le crédit maritime ne sera pas affecté par le privilège du chef d'abordage en ce sens que si par suite d'une fortune de

mer, le créancier simple est privé de son gage, il se retournera contre son assureur qui prend à sa charge les risques de ce genre. D'autre part, en n'accordant pas ce privilège pour abordage, vous vous trouverez en opposition absolue avec l'Angleterre.

Ce sont ces considérations là qui m'ont fait modifier l'opinion que j'avais autrefois et il n'était peut-être pas inutile de le rappeler ici.

M. AUTRAN (*président*). — J'ai reçu le texte de l'amendement de M. Lefebvre qui porte :

« Les indemnités dues à titre de réparation à tous biens, bâtiments de mer et personnes à raison d'un abordage résultant d'une faute nautique du navire ».

Mais quel est le sens de cet amendement? Est-ce qu'il vise les dommages causés aux personnes et aux biens qui se trouvent à bord du navire abordeur ?

Comme le faisait très bien remarquer M. Le Jeune — et c'est un point qui, j'espère, décidera soit M. Vio, soit M. Lefebvre à retirer leur amendement — c'est que cette question pour les chargeurs sur le navire n'a, à l'heure actuelle, aucune espèce d'intérêt pratique. Je crois en effet que soit passagers, soit chargeurs, ils sont tous privés de toute espèce de recours généralement quelconque contre le navire transporteur par les clauses et conditions, soit des connaissements, soit des billets de passage.

Par conséquent, s'il convient aux personnes, ou quand il s'agit de biens, aux chargeurs, de renoncer à toute espèce de recours contre l'armateur, comment, s'ils n'ont pas d'action, auront-ils un privilège? Cela dépasse mon faible entendement. Et si par conséquent, nous nous inspirons des nécessités de la pratique, il est absolument inutile de parler en faveur de gens qui n'ont pas d'action.

Nous ne sommes pas des théoriciens, ici, mais des gens

pratiques, et par conséquent. il me paraît absolument inutile de modifier l'article 4 qui, comme le disait M. Le Jeune, ne donne un privilège qu'à des tiers.

Dr. ANT. VIO (Fiume). — Io non ho parlato di privilegi pei danni recati alle persone ; io ho parlato di privilegi pei danni recati alle merci del bastimento.

Io ho proposto precisamente questo : Che il privilegio sia accordato non soltanto alle indennità proveniente da abbordaggio, ma anche alle indennità dovuta alle merci che portava il battello, perchè nell' art. 2 abbiamo detto che la responsabilità limitata si estende anche ai danni arrecati alle merci ed agli altri oggetti esistenti nel battello. Se dunque esiste questa responsabilità limitata pei danni recati alle merci, io ritengo che questi danni debbano pure avere il privilegio.

Praticamente dico : nasce un sinistro e rimangono danneggiate le merci per colpa del capitano ; oltre a questi danni nasce un abbordaggio : succederebbe che l'indennità dovuta per l' abbordaggio avrebbe il privilegio, mentre i danni sofferti dalle merci per colpa del capitano dello stesso battello, non avrebbero il privilegio.

Tale è la questione che io pongo. Prego di non confondere ; del resto decidano come credono.

(*Traduction orale par* M. FRANCK)

M. Vio a fait observer qu'il n'a pas voulu parler de dommages aux personnes, mais uniquement d'un privilége pour dommages causés aux marchandises, se trouvant à bord du navire lui-même.

L'hypothèse à laquelle il songe est celle-ci : un dommage est fait par la faute du capitaine, à la cargaison ; il se trouve que le capitaine est déclaré responsable : il est rendu responsable et il y a une action contre lui. Puis. survient un abordage. Avec le système proposé, la créance du chef d'abordage viendrait primer la créance non privilégiée pour dommages à la cargaison. causée elle aussi par la faute du capitaine.

M. LOUIS FRANCK (Anvers). — Quoique très attentif à ce qu'a dit à M. Vio, qui a fourni d'excellents rapports sur la question, je ne puis me rallier à sa proposition et cela pour deux raisons.

Première raison : quand le réclamateur du chef de manquant ou d'avarie ou de la cargaison en général a une réclamation importante, il prend ses mesures immédiatement ; il saisit ou menace de saisir et comme le navire est là, dans la plupart des cas, on donne une caution ou le navire reste saisi, et bien souvent le créancier hypothécaire aura en fait un intérêt à ne pas voir réaliser son gage, par vente forcée et arrivera à quelque arrangement. J'ai vu plus d'un cas de ce genre. Seconde raison : il y a l'effet des clauses d'exonération dans les connaissements qui rendent de moins en moins fréquents les recours de la cargaison. Vous ne pouvez pas faire en ces matières une règle absolument juste. La perfection n'est pas de ce monde. Il s'agit de savoir quel est l'intérêt dominant ; or c'est l'intérêt du crédit réel. Je suis d'avis que cet intérêt sera le mieux protégé par le traité tel qu'il est formulé, et j'espère que la conférence voudra suivre la Commission de Paris.

M. AUTRAN (président). — Nous passons donc au vote sur l'amendement de M. Vio.

Mr. BROWN. — I think I ought to have the opportunity of putting my amendment before the Conference. I propose now a fifth paragraph relating to the same subject.

M. F. C. AUTRAN, (*président*). — I think that we must proceed to vote on the text of M. Vio.

Mr. BROWN. — I bow to the President's decision, and I merely hand up my amendment.

Mr. LESLIE SCOTT. — In order to make the matter absolutely clear, may I say that the amendment proposed is to give a maritime lien to the owners of cargo damaged on the carrying ship — not to the owners of cargo on the other ship in case of collision, which exists already, and about which there is no dispute; but to add to it a lien for damaged cargo on the carrying ship. Those who are in favour of the amendment to extend the lien will say « Yes »; those against will say « No ».

VOTE

(*L'amendement est rejeté. — The amendment is lost.*)

La séance est levée. — The sitting is adjourned.

SÉANCE DE L'APRÈS-MIDI.
AFTERNOON'S SITTING.

M. F. C. AUTRAN (*président*). — En l'absence de Monsieur le Président, et à la demande du Bureau, je déclare la séance ouverte.

Nous en sommus arrivés à l'article 4 de l'avant-projet sur les Privilèges et Hypothèques maritimes, conçu comme suit :

ARTICLE IV

Le rang des privilèges se règle conformément à l'énumération donnée par l'article 3. Les créances figurant à un même numéro dans cet article viennent au marc le franc, sauf en ce qui concerne

Maritime liens shall rank in accordance with the priorities laid down in art. 3. Liabilities appearing in the same class share rateably, with the exception of liabilities for salvage which shall rank

les indemnités dues pour sauvetage et assistance ; celles-ci, viennent en sens inverse de la date où elles sont nées.

in the inverse order of the dates on which they came into existence.

Cet article demande fort peu de commentaires ; le rang des privilèges se règle conformément à l'énumération, c'est-à-dire dans l'ordre des n°s 1, 2, 3 et 4.

Parmi les créances classées au même rang une exception est faite toutefois pour les indemnités dues pour sauvetage et assistance, qui sont classées en sens inverse de la date à laquelle elles sont nées. En effet, c'est le dernier sauveteur qui a sauvé le gage de tous les autres.

Quelqu'un demande-t-il la parole sur cet article ?

M. LOUIS FRANCK (Anvers). — Il y a sur cet article 4 un amendement de l'Association des Etats-Unis :

« Les privilèges maritimes prendront rang dans l'ordre » qui est déterminé à l'article 3.

» Les privilèges figurant dans la même classe partagent » au marc le franc, à l'exception des créances mentionnées » dans la division 3 et dans la division 4, lesquelles seront » traitées comme ayant mérite égal et lesquelles, entre » elles, prendront rang dans l'ordre inverse des dates aux- » quelles elles sont nées. »

Les numéros 3 et 4 auxquels ce texte se réfère, sont les numéros de l'amendement américain, dans une partie qui n'a pas été expressément rejetée ce matin, mais qui se confond, comme je vous l'expliquerai dans un moment, avec le texte voté. Les délegués américains avaient fait des frais de conservation et de garde une catégorie spéciale, de sorte que l'indemnité de sauvetage prenait rang au n° 4 au lieu d'avoir le n° 3 et je vois par cette formule, autant que je crois la comprendre exactement que pour ces privilèges, — frais de conservation de garde et d'assistance et

de sauvetage, — on appliquerait la règle de l'ordre inverse des dates.

Je pense que la modification proposée n'a pas une grande importance ; en effet, comme nous avons donné aux frais de garde et de conservation le même rang qu'aux frais de justice ces frais sont sûrs d'être payés, la question de savoir dans quel ordre ils viendront entre eux ou à l'égard de l'indemnité d'assistance, est sans intérêt.

En ce qui concerne la question des indemnités d'assistance, la proposition de nos amis des Etats-Unis se confond avec le principe que nous avons posé.

Il ne reste donc que la question de rédaction. Il se peut que la formule qu'ils proposent a en vue spécialement le texte anglais, qui n'est qu'une traduction du texte français. Je demande à ces messieurs s'il ne leur convient pas de laisser la question au Bureau Permanent qui tiendrait compte de leur désir.

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The amendment which is proposed by the American Delegation is in the following terms :

« MARITIME LIENS SHALL TAKE RANK IN ACCORDANCE WITH THE PRIORITIES LAID DOWN IN ARTICLE 3 ». That is a general principle which we accept and which is embodied in our Article 4. Then the amendment states that « THE LIABILITIES APPEARING IN THE SAME CLASS SHARE RATEABLY WITH THE EXCEPTION OF THE LIABILITIES MENTIONED IN SUB-DIVISIONS 3 AND 4, WHICH LIABILITIES SHALL BE TREATED AS OF LIKE MERIT AND SHALL TAKE RANK IN THE INVERSE ORDER OF THE DATES ON WHICH THEY CAME INTO EXISTENCE ».

The Nos. 3 and 4 in the text which I have just read are not referring to the Article 3 as it stands, but to the Article 3 as it was worded by the American Delegation in their

amendment this morning ; and the only difference on this point between that amendment and the text we have voted is that expenses of warehousing, watching and preservation, which in the text voted are under No. 1, would, in the amendment suggested by our Americans friends, form a special class of liabilities coming in the third rank. That is one difference.

May I just submit to our American friends that the interest which they show for these expenses of warehousing, watching and preservation seems to me to be amply met by the text as it was voted, seeing that in that text those expenses and liabilities get on the first rank and come together with Court fees, taxes and public charges. Then there remains No. 4, which relates to salvage, and on that point the American amendment is quite to the same effect as Article 4 as proposed by us — the only difference being a difference of wording ; and I submit to M. Brown whether, under those circumstances, he will not consent to refer these amendments to the Permanent Committee.

M. Brown (New-York). — With regard to salvage I do not think it was intended to have any difference, even in the wording. My amendment had refrence to the rank of the expenses incurred in preservation. I may say that I think the translation into English is entirely erroneous. Under the circumstances I shall not press this amendment to the vote, but I merely wishet to bring it forward as expressing the opinion of the American Delegation.

M. L. Franck (Anvers). — La délégation américaine renonce donc à l'amendement.

M. F. C. Autran (président). — Je mets au vote

l'article 4. En présence des observations échangées, et s'il n'y a pas d'objections, je le considère comme adopté.

(*Adopté. — Carried*).

Nous passons donc à l'article 5.

Mr. BROWN. — I have a further amendment upon that Article 4, which I hand to the Bureau.

M. L. FRANCK (Anvers). — The Article proposed as an amendment is now really a new article and is in the following terms :

« AS BETWEEN DIFFERENT VOYAGES THE MARITIME LIENS MENTIONED IN SUBDIVISIONS 3, 4, 5, 6, 7, 8 AND 9 OF (*the American amendment on*) ARTICLE 3, ARISING IN RESPECT OF EACH VOYAGE, SHALL BE OF SUPERIOR RANK TO ALL SIMILAR LIENS OF ANY PRECEDING VOYAGE. THE MARITIME LIENS MENTIONED IN SUBDIVISIONS 1 AND 2 THEREOF, ALTHOUGH ARISING, IN FACT, UPON DIFFERENT VOYAGES, SHALL RANK AS IF THEY HAD ARISEN UPON THE LAST VOYAGE ».

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En français, le texte est comme suit :

« ENTRE DIFFÉRENTS VOYAGES, LES PRIVILÉGES MENTIONNÉS DANS LES CATÉGORIES 3, 4, 5, 6, 7, 8 ET 9 DE L'ARTICLE 3 (*tel que la délégation américaine l'a proposé*) NAISSANT D'UN VOYAGE DÉTERMINÉ, SERONT D'UN RANG SUPÉRIEUR A TOUTES CRÉANCES SIMILAIRES NÉES AU COURS D'UN VOYAGE PRÉCÉDENT. LES PRIVILÉGES MENTIONNÉS DANS LES CATÉGORIES 1 ET 2, QUOIQUE NAISSANT EN FAIT, DE VOYAGES DIFFÉRENTS, AURONT RANG ENTRE EUX COMME S'ILS ÉTAIENT TOUS NÉS AU COURS DU DERNIER ».

La portée de cet article est donc d'introduire dans la

question du rang des priviléges la notion du voyage, exception faite pour les frais de justice et pour les gages du capitaine et de l'équipage. Par conséquent, Messieurs, on demande que pour les indemnités dues à raison du sauvetage et de l'assistance et pour les indemnités à raison de fautes nautiques, on distingue selon le voyage pendant lequel elles sont nées.

Nous faisons observer qu'en ce qui concerne le sauvetage et l'assistance, nous donnons déjà satisfaction au désir exprimé par nos amis, puisque d'une façon absolue l'indemnité pour le sauvetage fait en dernier lieu passe avant les autres.

Reste l'abordage. Là, Messieurs, nous n'avons pas fait cette distinction parce qu'il n'y avait pas de raison pratique de le faire. Les motifs qui militent en faveur du privilége donné à l'abordé n'ont rien de commun avec un voyage au cours duquel l'accident se produit. Pour l'assistance, c'est autre chose. Le dernier qui sauve le navire sauve en même temps le gage de tous les autres créanciers, mais quand nous donnons un privilége à l'abordé, ce n'est pas parce que l'indemnité pour abordage a un caractère conservatoire ; c'est pour une série de raisons d'opportunité. Ces raisons sont bonnes ou mauvaises ; nous avons décidé qu'elles sont bonnes, mais elles ne deviennent pas meilleures à raison de leur date. Cela n'a pas une importance bien grande, du reste, puisque la créance d'abordage se prescrit par un délai bien court et que le plus souvent on se fait donner caution. Si, au contraire, le créancier n'a pas l'occasion de saisir le navire, et si après, il le retrouve, ce créancier ne se plaindra pas trop de devoir partager avec un autre abordé.

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I was just saying to our American friends that their amendment was quite natural if the first rule had been adopted, because then you had bottomry bonds, necessaries and various other privileges. But at present the only liens remaining are for salvage and collision, as far as the principle of dates is concerned. Now, for salvage your rule is accepted; for collision, as the origin of that lien is not of a conservatory nature, the second collision not having benefited the position of the claimant for the first collision, the dates have nothing to do with the lien.

M. BROWN. — I think that a subsequent lienor, by reason of collision, ought to have a priority over an earlier lienor who has had the opportunity of enforcing his lien and has not enforced it. However, I do not think that that will prove a stumbling block; and while I do not abandon the amendment, I do not very strongly press it.

M. LOUIS FRANCK. — La délégation américaine, tout en maintenant son avis, que le privilège pour la dernière collision doit passer avant celle qui précède, n'insiste pas fortement, je crois donc qu'il n'y a pas lieu de passer au vote.

M. le Dr. SCHAPS. — Je vous prie d'ajouter à l'avant-projet un article 4-bis comme suit :

« *Les privilèges ci-dessus établis sont les seuls qui seront* » *reconnus par la législation de chacun des Etats con-* » *tractants.* »

Pour motiver cet amendement, il suffit de le lire. Si les Etats laissaient subsister la faculté d'accorder à d'autres créances des privilèges, une réglementation internationale serait de bien peu d'utilité.

(*Verbal translation by* Mr LESLIE SCOTT).

The proposal of M. Schaps is to add to Article 4 a clause saying « that the above list of liens shall be the only liens recognised. » It ought, I think, properly to come in at the end of Article 3.

M. F. C. AUTRAN (*président*). — Je crois que l'observation qui vient d'être présentée, est absolument juste en ce sens que si nous voulons faire une loi internationale, il faut que tous les privilèges autres que ceux énumérés dans l'article 3 de ce projet, disparaissent. Par conséquent, je suppose que nous donnerons entière satisfaction à M. Schaps en ajoutant, au début de l'article 3, le mot « seuls ». L'article deviendra donc : « Seront seuls privilégiées..... » etc.

(*Verbal translation by* Mr. LESLIE SCOTT)

M. Autran proposes to accept the proposition limiting the number of liens, but to do it as a matter of wording by adding, at the beginning of Article 3 in English.

« The following liabilities ALONE shall give rise to maritime liens ».

I suggest that if there is any question of drafting, as to whether the text should take that form or the form proposed, that is a matter which should be left, with other questions of drafting, to the Permanent Bureau.

(*Adopté. — Carried*).

An English Delegate suggested that a better wording would be : « Only the following liabilities shall give the right » etc.

Mr LESLIE SCOTT. — That is the true translation of the French.

M. FIAMBERTI. — Ho demandato la parola per sottoporre all' assemblea questa osservazione. Io sono perfettamente dell' opinione dell' onorevole preopinante per

aggiungere nell' *avant-projet* una dichiarazione che impedisca ai singoli Stati di legiferare in opposizione a quanto è statibilito nell' *avant-projet* stesso, che deve avere carattere internazionale. Ma io credo che non sia il caso di vietare ai singoli Stati, all' infuori di quelli che sono d'accordo con quanto è stabilito in questo *avant-projet*, di stabilire privilegi in quanto riguarda i rapporti di cittadini dei singoli Stati.

Mi spiego. Nessuno Stato che avrà accettato l'*avant-projet* di carattere internazionale, potrà fare o conservare disposizioni legislative che sieno in contrasto con quelle stabilite nell' *avant-projet*. Ma all' infuori di questa limitazione, io credo che sarebbe pericoloso, non conveniente e non necessario, imporre ai singoli Stati una limitazione per quanto riguarda i proprî cittadini.

Supponiamo che noi, in Italia, stabiliamo o conserviamo una disposizione la quale accordi il privilegio ai caricatori della nave. Questa disposizione non sarebbe accettata ; ed io faccio voti che non lo sia ora dalla conferenza internazionalc.

Orbene, finchè gl'interessi del caricatore saranno discussi in confronto di coloro che hanno diritto in base alla legge internazionale, tanto meglio ; ma allorquando sorgessero dei conflitti internazionali, o quando tali conflitti non potessero pregiudicare il diritto nazionale, io credo che sarebbe pericoloso, non conveniente impedire ai singoli Stati di stabilire privilegi per quanto concerne i proprî cittadini.

Ecco il mio concetto.

(*Traduction orale par* M. BETOCCHI).

L'honorable M. Fiamberti vient de dire qu'il est parfaitement d'accord avec les orateurs précédents pour ajouter à l'avant-projet une disposition défendant aux divers Etats de légiférer contrairement

aux dispositions de ce traité pour autant qu'il s'agisse de matières ayant un caractère international. Mais là où il s'agit d'intérêts ayant un caractère exclusivement national il ne serait ni convenable, ni nécessaire, d'empiéter sur leur liberté, — ce serait même fort dangereux. Ici il faudrait leur laisser toute latitude, pourvu bien entendu qu'ils ne touchent pas aux intérêts internationaux.

(*Verbal translation by* M. FRANCK)

Sig. Fiamberti says that as far as international relations go he quite agrees with what has fallen from Dr. Schaps and from the President, but that when only Italian creditors are in the presence of an Italian ship, nothing should prevent the Italian law applying to matters of maritime liens between those two claimants, according as the Italian Parliament may think fit to direct; provided always that the position of creditors of different Nationalities should not be touched.

M. LOUIS FRANCK (Antwerp). — If I am permitted to say a few words as to this. I think, Mr. President and gentlemen, that however logical this may appear at first sight, it would, in practice, be likely to work much harm. Let us, for instance. take the frequent case of a collision action with claims brought forward by the owners of the cargo against the carrying ship. We have decided this morning that we did not consider it necessary to give to Claimants of that sort a maritime lien. Suppose that following Sig. Fiamberti's suggestion the Italian law should give them such a lien provided all parties are Italian, what would be the consequences ? First, Mr. President and gentlemen, what is the Nationality of the owner of a cargo — what is the Nationality of the man who brings the claim. As a matter of fact the man who brings the claim is the bearer of the bill-of-lading at the port of destination. That may be, and is, in many cases, simply a broker or a forwarding agent or commissionnaire of some sort ; but the real interested party may be a foreign cargo owner, or the underwriters at Lloyds ; and then you arrive at one of the

following possible consequences: either the really interested parties in England, for instance, will, in some circumstances, be labouring under these nationally instituted liens ; or parties who have not the right, being not truly genuine national parties, will simply by transferring the bill-of-lading, before bringing the claim, put themselves under the more favourable national legislation. So that, according to whether the national system of liens will be better than the international system for any given party in a given case, the law may be made to work on the one side or the other. I think we must adhere to the simple rule « one law for every one » and the Nations will either adhere to the treaty or not.

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Je signale à M. Fiamberti qu'en théorie, il a parfaitement raison ; on pourrait dire en effet que les Etats conservent toute liberté : c'est un traité international qui n'a pas d'effet entre nationaux.

Mais en pratique, une difficulté considérable surgira.

En matière d'abordage, par exemple, qui introduit la réclamation pour la cargaison ? C'est le porteur du connaissement. C'est l'agent maritime ou le commissionnaire ; mais le propriétaire véritable peut être un Suisse, un Autrichien ; et l'intéressé véritable c'est l'assureur qui est à Berlin ou à Londres. De là, cette conséquence que si le système national des privilèges se trouve être plus favorable que le système international, — on fera passer le connaissement entre les mains d'un Italien, s'il s'agit d'un procès en Italie, alors que les véritables intéressés seraient des assureurs étrangers. Je pense donc qu'il vaut mieux ne pas entrer dans cette voie Les pays adhéreront au traité ou non ; mais s'ils adhèrent, il faut qu'ils accordent

un traitement égal tant aux nationaux qu'aux étrangers. Du reste le commerce maritime est essentiellement international.

Je prie donc M. Fiamberti de ne pas insister.

M. FIAMBERTI déclare retirer son amendement.

M. AUTRAN (*président*). — Nous abordons donc l'article 5 :

ARTICLE V

Le privilège s'éteint par l'expiration du délai d'un an à partir du moment où le créancier a pu agir.	A maritime lien shall come to an end at the expiration of one year after the creditor was in a position to enforce it.

M. B. C. J. LODER (Rotterdam). — Messieurs, l'article que nous avons en ce moment devant nous, nous met dans une situation un peu bizarre. C'est que l'article 5, tel qu'il est conçu en français, est un peu différent du texte tel qu'il est rédigé en anglais. Je tiens à appeler votre attention sur la dernière partie de l'article. En français, il est dit : *où le créancier a pu agir*. C'est donc une prescription qui commence, de fait, au moment ou l'action est née. En Anglais, au contraire, je lis : « ... *was in a position to enforce it* ». Cela n'est pas du tout la même chose. Suivant le texte français, le délai de prescription commence à courir dès la naissance de l'action ; en anglais, c'est la possibilité d'agir qui marque le commencement.

Je crois qu'il est utile de raconter à la conférence que cet article a eu une histoire.

La Commission de Paris avait proposé une prescription pour faire valoir les privilèges : alors, nos amis anglais nous ont dit qu'ils ne pouvaient pas accepter cela, parce qu'il n'y avait pas de prescription pareille dans la loi

anglaise. Sur ce, un accord est intervenu, et cet accord était celui-ci : que l'Angleterre voulait bien accorder une prescription, mais seulement à partir du moment où on aurait pu procéder à l'exécution. Et voilà pourquoi le texte anglais porte : « when the creditor was in a position to enforce it ».

Si la signification de cette disposition est bien celle que je pense, il faudrait changer évidemment le texte français parce que les deux textes doivent se couvrir. Quant à la rédaction, je pense que le Bureau Permanent la fera mieux que moi.

Mr. JUDGE BRADFORD. — Mr. President and Gentlemen of the Conference, the delegates from the United States offer the following by way of substitution for Article 5 as printed :

« *A maritime lien shall come to an end unless proceedings to enforce it are commenced before the expiration of two years after the time when the creditor by the exercise of reasonable diligence, due regard being had to the circumstances of the case, could have commenced proceedings for the enforcement of such lien* ».

It seems to us that a provision of this kind would be eminently just and equitable. It would be calculated to do justice to small creditors — ignorant creditors — creditors at a distance from the position of the ship, without in the least interfering with the two years limitation with respect to larger claims. The purpose of this amendment is virtually to establish a two years limitation subject to an exception in the exercise of the sound judicial discretion of the Court before which the question may arise in cases of hardship, in cases of ignorance, in cases of small claims where the creditor cannot be expected and where it would be unreasonable to expect the small creditor to resort to a

foreign Court for the enforcement of his lien. This virtually is a two years limitation, because its practical operation, I think you will agree, will be that all large claims will be barred by the expiration of the two years limitation unless proceedings are instituted. And why? In the proposed Article it is the intention that the Court before which the point is raised shall exercise its sound judicial discretion; but the primary limitation is the two years limitation. Now we will suppose a case of a creditor having a large claim of £ 5,000 or £ 10,000 or even less who has not commenced proceedings within two years, what must evidently be the action of a Court in the exercise of sound discretion? The Court would say, « Why here you have had this large claim. You should have kept your eyes open — you should look at the papers containing marine intelligence; and you should follow the ship wherever she goes and there prosecute your claim if the ship does not come into the ports of your own Country ». On the other hand suppose it is a small claim, suppose it is a claim for seamen's wages (and we must recollect, gentlemen, that the sailors are the wards of the Admiralty) is it to be conceived that they are to be compelled to pursue the vessel to a foreign Port — to go to a great distance in order to enforce any insignificant claim? That would be manifestly unjust. So in respect to other small claims it would be manifestly a hardship and an injustice to deprive these small creditors of all redress. If you allow the Court to exercise the sound discretion, the Court would say in such cases, « We will not consider this small creditor barred under the circumstances. It is unreasonable that he should be compelled to resort to Japan or to France or to Italy to enforce his claim ». Suppose that the small creditor is resident in the United States, for instance, it would be unreasonable in the last degree. But those claims in respect of which any

Admiralty Court in the exercise of sound discretion would hold not to be barred strictly by the two years limitation, would be evidently of a comparative insignificant character and would not interfere with the extension of credit to vessels which has been so much enlarged upon before this Conference. This amendment virtually establishes the two years limitation, and I do not know that I can explain it more clearly than I have done.

(*Traduction orale par* M. Louis Franck)

L'amendement de M. Bradford est le suivant :

« *Un privilège maritime s'éteindra, à moins que des procédures aient été entamées pour le faire valoir avant l'expiration de deux ans après le temps pendant lequel le créancier en usant d'une diligence raisonnable. et tenant compte de toutes les circonstances de chaque cas, aura eu l'occasion de faire valoir pareils droits* ».

Les motifs donnés sont ceux-ci : Il est peut-être raisonnable de poser un délai absolument fixe quand il s'agit de créanciers importants qui peuvent, à l'étranger, poursuivre leurs droits ; mais il faut tenir compte aussi de ce qu'il y a des créanciers peu importants, mais cependant dignes de toute sympathie et tout à fait intéressants qui peuvent ne point avoir l'occasion d'agir. En pareil cas, la Cour appréciera et on éviterait ainsi toute iniquité à cet égard.

M. Fiamberti. — Lo scopo del trattato è quello di assicurare l' esistenza di un credito marittimo, e quindi di accertare la quantità dei privilegi che possono provenire da questo diritto marittimo. Ma è ancora necessario di stabilire la durata di tali privilegi indipendentemente da qualsiasi occasione di esercitarli ; ed in secondo luogo occorre stabilire un giorno di decadenza fin dal giorno in cui un fatto si verifichi o provochi azione di privilegio.

* * *

Je pense qu'il est convenable d'établir une prescription du droit de privilège et d'établir aussi un délai pour l'ex-

tinction du privilége. A défaut de pareille mesure, nous aurons peut-être des priviléges établis qui resteront inutilisés par des créanciers qui ne feront pas valoir leurs droits. Je pense donc qu'il est convenable d'établir un terme après lequel ils seront non-recevables, ce délai existant indépendamment du temps auquel le créancier a pu intenter l'action.

En second lieu, il faudrait une extinction du privilége quand un fait s'est accompli pour lequel le créancier a eu l'occasion et la nécessité d'agir par voie de privilége ; s'il ne le fait pas, il faut qu'après un laps de temps assez court il soit déchu de son droit de privilége.

Je crois que pareilles dispositions seraient absolument nécessaires, parce que, supposons par exemple, un cas d'avarie; nous laisserions les intéressés sur le navire dans l'incertitude, si nous ne forçons pas les créanciers à agir ; or l'incertitude constitue déjà un dommage, plus au moins grand suivant l'importance des droits en jeu. L'article 5, tel qu'il est rédigé à présent, laisse subsister l'incertitude parce qu'il dit seulement que le privilége s'étaient par l'expiration du délai d'un an à partir du moment où le créancier a pu agir. Donc, il n'y a pas de prescription, puisque nous n'avons ici que le cas où le créancier peut faire valoir ses droits mais ne le fait pas ; pour l'instant, il faut, au contraire, viser la seconde hypothèse : un évènement qui mette en action le privilége.

Ensuite, en second lieu, il faut envisager l'extinction — la décadence — dans un certain laps de temps après les faits qui ont donné naissance à l'action.

(Verbal translation by M. L. Franck)

M. Fiamberti thinks that in order to give a sound basis to maritime credit, privileged or maritime liens are not to be protracted indefinitely, and that therefore there should be a short delay of prescription ending

at a given fixed date and not at any date which may depend upon the individual creditor or upon his diligence ; he should act within a given time from the moment when his right is born ; and if he allows his time to elapse then the privileged character of his claim should be forfeited and it should be left to him to enforce it as an ordinary claim.

M. F. C. Autran (*président*). — Avant de donner la parole à d'autres orateurs, je crois que pour la clarté de la discussion, il est nécessaire que je vous fasse connaître la genèse de cet article.

La difficulté au sujet de la prescription s'est présentée déjà à la conférence diplomatique de Bruxelles, en matière d'abordage, et là nous nous sommes trouvés en face de théories différentes : d'une part la théorie continentale — une prescription avec des délais variables, et d'autre part la théorie anglo-saxonne, qui n'admet en matière d'abordage aucune prescription. Les délégués anglais ont donc indiqué qu'il leur serait très difficile, pour ne pas dire impossible, de faire admettre dans la législation de leur pays une prescription, qui serait quelque chose d'absolument nouveau dans leur institution juridique, et ils ont accepté un certain délai. C'était donc une concession, et une concession importante qu'ils faisaient là ; mais ils ont subordonné cette acceptation à la condition que ce délai ne partirait pas d'un temps absolument fixe — la date de la naissance de la créance, — mais commencerait à courir à partir du moment où le créancier a pu agir, et par cette expression « agir », on a entendu, à Bruxelles, faire saisir le navire, et c'est pour cela que la traduction anglaise porte « *to enforce the claim* ». Je crois par conséquent qu'étant donnée la rupture avec les anciennes traditions, à laquelle consentent nos amis anglais, il est de toute justice que nous continentaux, nous fassions un peu brêche à nos habitudes pour laisser aux Cours, le cas échéant, le soin

d'apprécier si les créanciers ont pu, ou non, faire saisir le navire. C'est là une question de fait qui serait, dans chaque cas, tranchée selon les circonstances.

Je suis d'accord avec M. Fiamberti pour reconnaître, par exemple, que l'acquéreur du navire a intérêt à connaître le plutôt possible s'il y a des privilèges sur le navire et je crois qu'au point de vue purement juridique et théorique, il a parfaitement raison. Mais nous sommes réunis ici pour arrêter des règles qui s'appliqueront partout. C'est pour cela, que nous sommes, par conséquent, arrivés à cette formule transactionnelle dont il n'était pas superflu de vous faire connaître les origines.

Avec les moyens de communication modernes, avec les journaux spéciaux, comme la « Shipping Gazette » dans lesquels les mouvements de navires sont enregistrés régulièrement, il est très facile, pour un créancier, de savoir ce que devient tel ou tel navire et de le faire saisir. Le délai d'un an est donc largement suffisant, d'autant plus que, comme le disait M. Fiamberti tout à l'heure, il importe que l'acheteur soit, dans un délai non excessif, à l'abri de toutes réclamations du chef du précédent propriétaire. Par conséquent, en fixant le délai de prescription à un an à partir du jour où le créancier a pu agir, je crois que nous avons fait la part très large, et je pense pouvoir dire, au nom de la Commission, qu'il n'y a pas lieu d'en donner davantage.

(*Verbal translation by* Mr. LESLIE SCOTT).

The President has pointed out that this Article following on similar Articles agreed to in the Collision and Salvage Codes at the Diplomatic Conference at Brussels, resulted from a compromise between conflicting systems which were widely apart — on the one hand the Continental systems which contained a large number of very different limits in point of time, on the other hand the English system which contained no limit whatever in point of time unless the Court in its

discretion thought it would be equitable to allow the claim to be pressed. The result in the Collision and Salvage Code was that the period of two years was prescribed subject to a provision that there must be a fair opportunity of arresting the vessel within the territorial waters of the Plaintiff's State. The President suggests that as this Article was the result of a compromise it is desirable that no attempt should now be made to extend in any way the terms of the Article so as to make them theoretically nearer to Continental jurisprudence.

Sir WILLIAM PICKFORD. — I do not wish to occupy the Conference very long with regard to this Article because with some verbal differences I entirely agree with what the President has said as to the history of the Article in the Collision and Salvage Codes. I may say that in principle I am entirely in accord with the amendment that has been proposed by the Honourable Judge Bradford; but to a certain extent I think the wording of that may leave matters somewhat too vague. I do not know how it may appear to the rest of the members of the Conference but it does appear to me that it is a vital point that if you have a period of prescription for Salvage and for Collision it seems a natural and logical thing to have the same period of prescription for the liens which are attaching in regard to Salvage and Collision, and I cannot see the advantage of having a period of one year for the lien and two years for the action. There may be a reason but it seems to me the natural and logical thing would be to have the same principle of prescription for both the lien and the action. Now two years has been fixed (subject to the conditions which I am going to mention) as the period of prescription for the action both for collision and for salvage. I am not going to trouble this Conference with a discussion upon that subject which I was obliged to trouble the Diplomatic Conference of Brussels with. With regard to the difference between the Continental and the English systems as to the

period within which you could enforce the maritime lien, I was of opinion, and I am of opinion, that the English system could hardly be defended : it left the whole thing entirely to the idea of the particular Judge who might be sitting; and I may say that you cannot always say that the particular Judge who may be sitting will always say what s right. He would not have any rule by which to guide him, and in one, instance there was a case in which the Court actually allowed a maritime lien to be enforced when a ship had been in England, I think it was something over forty times, and when eleven years had elapsed after the collision had occurred. That was a state of things that I, although representing British interests, felt it very difficult to defend upon any ground of common sense; therefore I thought, and think still, that a concession on that point ought to be made. But at the same time I did think, and I think still, that you ought not in cases ot enforcing remedies against ships to take a hard and fast line of time without considering the circumstances of whether the creditor has had an opportunity of enforcing his right or not. In the ordinary Common Law Civil case you are all in the Country, or at any rate you can be got at; and a man must enforce his claim within a certain limited period or he must lose it. It is different when you come to deal with ships and claims with regard to ships. You can follow them by the Shipping Gazette and other publications and you can find out to a certain extent where they are, but if a man has a maritime lien for a small sum upon a ship it seems to me a very hard thing to say that if that ship does not come to a Port of his Country in two or three years and is trading somewhere it may be in the Sandwich Islands or some place like that, he shall be obliged to go to the expense and trouble for a small claim against that

ship, of going to that distant Country, or otherwise he shall lose his claim.

Now we come to the principle that was adopted, and we all agreed to it, and the Article that was proposed was accepted, with regard to the question of Salvage and Collision. That I think was Article 7 of the Collision Code; and it does seem to me that that is an Article which we may well take as a precedent and a form for the Article relating to the extinction of the lien in this particular case. I feel that this present Article is a little ambiguous. The French words : « *à partir du moment où le créancier a pu agir* », are not very clear : the English equivalent « At the expiration of one year after the creditor was in a position to enforce it » are not much clearer, and I think considerable difficulties might arise.

And with regard to the wording of the amendment which the Honourable Judge Bradford has put in I think the same difficulty might arise. Now, if I might read to you the article that was agreed to on the Collision and Salvage Codes, I think it fairly represents and ought to be the law with regard to the extinction of the lien as well as the law with regard to the prosecution of the action. The first paragraph begins by saying. « The action for damage is subject to the prescription of two years from the time of the collision, in respect whereof the Action shall have accrued, provided always that » — and then there come two conditions, the first of which is : « *Les causes de suspension et d'interruption de cette prescription sont déterminées par la loi du tribunal saisi* », the English translation being : « The grounds upon which such a prescription may be suspended or interrupted shall be determined by the law of the Court where the case is tried ». Stopping there, it is very much in accord with Judge Bradford's proposals. Then there follows this which was introduced, I think, at my instance at Brus-

sels : « The fact that the Plaintiff has not had a reasonable opportunity of seizing the Defendant's vessel within the territorial waters of the State where he is domiciled, or has his principal place of business, may be deemed to be sufficient ground for the suspension of the prescription imposed by this Article ». Now, if I may suggest, I think, as I said before, that the natural and logical thing is to have the same law for the extinction of the lien that you have for the prescription of the action, and if you adopt something in the sense of this article of prescription in the Collision Code (simply altering the words to suit the subject matter) you will then have what is, I think, a fair thing. You have a prescription of two years *prima facie*, but you have an interruption of that prescription if the Court which is trying the case thinks that the circumstances require that interruption; and you have it pointed out to the Courts that they may consider and that it is one of the things they must consider — whether the creditor has had an opportunity of seizing the ship within the waters of his own State. That is not conclusive — there may be reasons why, although he has not had that opportunity, his lien may be extinguished ; but that is a matter which the Court has to consider. And I will suggest that this Article furnishes a basis, subject to redaction for an article, which ought to be substituted for Article 5. I think that is, in principle, in accordance with what his Honour Judge Bradford has said.

JUDGE BRADFORD. — I will ask Sir William Pickford just one question. My impression is, from the statement that has been made that the provision of which he would approve would be entirely satisfactory to the Delegation from the United States, subject to one positive question of this character. The creditor must have a reasonable opportunity of seizing the vessel within a port of the

country where he resides. Now let me suggest this question — suppose a vessel calls at a port say for an hour on a day, would it or not (I ask for information) be for the Court to entertain the case and to say whether or not, in view of the presence of the creditor and of the ship within that port — in view of his poverty, in view of his ignorance — he could reasonably be expected to see that vessel call in for only an hour or only a day.

Sir William Pickford. — I should say, speaking for myself, and only for myself, without any hesitation that those are matters which certainly would have to be considered by the Court; because it says it must be determined by the law of the Court, and I think the Judge must consider, as one of those things, whether the creditor has had reasonable opportunity of seizing the ship within his territorial waters; and in considering whether he had reasonable opportunity he would have to consider the length of time and the state of knowledge and everything else with regard to the matter.

Judge Bradford. — I beg to state that the suggested change is perfectly satisfactory to the Delegation from the United States.

M. F. C. Autran (président). — Si vous voulez me permettre de résumer un peu le débat, je donnerai tout à l'heure la parole à ceux qui désirent ajouter encore quelques observations.

Il me semble que les observations de M. Pickford sont très raisonnables. Comme la formule citée par lui a été adoptée à une assemblée où il y avait 23 nations réunies, il est évident que nous ne devons pas nous en écarter si nous voulons que nos résolutions soient adoptées.

M. Grafagni a déposé un amendement sur le bureau,

demandant que le délai de prescription soit réduit à six mois. Je lui donne la parole pour développer son amendement, s'il le désire.

Mr. GRAFAGNI. — Sottometto all' assemblea questa idea che ritengo pratica. Il commercio, e specialmente il commercio marittimo, ha bisogno di sollecitudine e di precisione. Quindi a me sembrerebbe contrario a tutto quello che richiede il commercio specialmente marittimo, lasciare per un anno una sospensione che può essere dannosa. Dal momento che oggidi', coi rapidi mezzi di trasmissione che vi sono, si può in uno a due mesi al massimo, esercitare un ' azione in qualunque parte del mondo, mi pare che la sospensione per un anno sia esagerata e possa pregiudicare i bisogni del commercio.

Io credo invece che una tale azione possa esercitarsi in sei mesi.

Se un creditore privilegiato vorrà temporeggiare, peggio per lui ; ma se egli vorrà tutelare i suoi interessi, in sei mesi potrà esercitare qualunque azione : *vigilantibus et non dormientibus !*

Si farebbe cosè, contemporaneamente, l'interesse del creditore e del commercio.

(*Traduction orale par* M. BETOCCHI)

M. Grafagni a dit que dans l'état de la civilisation moderne avec les moyens de communications rapides, le commerce n'a qu'un seul besoin : la certitude et la précision. Or, laisser en suspens l'exercice de droits aussi importants pendant un an, ce serait absolument contraire à cette certitude et cette précision.

Il demande au contraire que ceux qui ont le droit et le devoir d'agir, agissent le plus vite possible. S'ils perdent du temps, tant pis pour eux.

(*Verbal translation by* Mr. LESLIE SCOTT)

The Deputy Grafagni says that in view of the means of communication at present available for everybody engaged in modern commerce,

and the need of precision in such matters as lien, it will be better that Article 5 should provide for an exact period of 6 months and no more. Parties having any interest in such matters, ought to do their utmost to have them settled speedily. If they neglect to protect their own interests, so much the worse for them.

M. CHARLES LE JEUNE (Anvers). — Je crois qu'en tenant compte des diverses observations qui ont été faites, il faut se dire que nous nous trouvons devant cette situation-ci :

Si nous arrêtons à deux ans le délai de la prescription, nous arrivons, — avec par dessus le marché les additions que M. Pickford a proposées — à une extension excessivement grande. Et peut-être bien vaudrait-il mieux s'en tenir au délai d'un an, tout en adoptant les idées qui ont prévalu dans l'acte de la conférence de Bruxelles, dont on vous a donné connaissance. Le délai d'un an est largement suffisant, comme un des orateurs précédents vient de le dire, avec les moyens de communication actuels. Et du moment où l'on y ajoute encore les restrictions proposées par les membres anglais et américains, en n'enlevant pas au créancier ses droits au privilège avant que la preuve ait été produite qu'il a pu raisonnablement les exercer chez lui, je suis d'avis qu'il ne faut pas trop étendre ce délai de prescription. Ce serait désavantageux, notamment pour les raisons qu'à fait valoir M. Grafagni. N'oublions pas que les privilèges sont occultes et que le droit d'exercer une action et le délai de prescription sont deux choses différentes.

Et un délai de plus d'un an aurait encore d'autres conséquences fâcheuses pour le crédit maritime, en ce qui concerne les questions d'assurance. Certainement, pour se mettre à couvert le créancier hypothécaire se fera toujours remettre la police d'assurance de l'année en cours. Mais il ne sera pas, par là, garanti contre des réclamations qui

éventuellement s'attacheraient à des années antérieures. J'estime qu'un homme prudent exigerait aussi la police d'assurance de l'année antérieure et avec la prescription d'un an, ces garanties seraient raisonnables et il pourrait traiter avec quelque sécurité ; mais si vous étendez ce délai à deux années, cela devient presqu'impossible.

En conclusion, il me semble que le délai d'un an devrait être maintenu, avec les changements au texte proposés par M. Pickford.

(*Verbal translation by* Mr. Leslie Scott).

M. Le Jeune suggests that the character of a privileged or maritime lien being such that it extends into the hands of purchasers for value without notice, it is not desirable to extend it beyond the year proposed in the present draft. It is true that the right of action continues up to the two years limit laid down in the Brussels Treaty : but he says the character of the lien is so essentially different from that of a simple right of action that he does not think it ought to be extended beyond the year suggested; altough, at the same time, he thinks that the analogous extensions under special circumstances to those granted under the Brussels Convention for a period of two years — that is to say the reasonable opportunity of seizing the ship in the territorial waters — might have a limit of one year, so that the Article would be, in substance, the same as in the Salvage and Collision Codes, with one year substituted for two.

M. Louis Franck. — I beg leave to insist in the same direction. I think that if we get exactly at the meaning of the Article our American and English friends will agree with us. There is no question in this matter of suppressing the right of action : the right of action will remain for two, three or four years as the case may be; the only thing is that the privileged character of the liability will disappear. Now, gentlemen, you should not forget what that privileged character means, and what hardship it can inflict on absolutely innocent parties, namely those who, in good faith, buy a ship and pay for it. You have a ship, you see

that the register is clean, you buy it, you pay fully for it, what we ask is that at least after one year you should feel sure that there is no man who will be able to say when your ship comes to some foreign port :

« Pay for this debt which has arisen at the time when this ship has belonged to somebody else ». Well, gentlemen, if you have to put in the balance the sympathy which is due to the innocent buyer of a ship, who, in good faith, has paid full value, or the mortgagee who has advanced money and the creditor who, after one year, is deprived of his lien, tho whom are you going to give the preference? The creditor at least lays himself open to the reproach that he has allowed one year to elapse without doing anything.

Then comes the objection which has been put so ably by Judge Bradford — he says there may be special considerations of equity in some special circumstances. Well those would be met by accepting the text of the Brussels Conference, seeing that with that text the rule will be one year's prescription and the causes of suspension of prescription regulated by each National law. Therefore, in the countries where the fact that no means were given by the use of due diligence to exercise the right, is a cause of suspension this position could be maintained. It seems to me that if you take into consideration these various facts you should admit the conciliatory system suggested by M. Le Jeune.

* * *

J'ai dit ceci :

Il ne s'agit pas de faire tomber l'action, mais simplement de faire tomber le caractère privilégié. Or, il ne faut pas oublier que les gens auxquels nous songeons sont les acquéreurs de bonne foi qui avaient le droit de croire leurs droits bien assurés ou les créanciers hypothécaires,

qui sont dans la même situation. Si vous prolongez trop longtemps la durée du privilège, vous allez sacrifier ces acquéreurs, ces créanciers hypothécaires, qui sont sans reproches, à des gens qui ont été négligents.

On peut tenir compte des amendements de nos amis anglais et américains, comme on l'a fait à la conférence de Bruxelles. Dans cet ordre d'idées j'estime que l'on pourrait se rallier au texte de sir William Pickford, mais à la condition que le délai fut d'un an au lieu de deux ans.

M. F. C. AUTRAN *(président)*. — Avant que M. Artelli ne prenne la parole, M. Pickford désire nous faire une communication.

Sir WILLIAM PICKFORD (London). — I am sorry to interfere with the speaker, but I thought it might shorten the matter if I say that, although I personally think still that the natural thing, as you have taken two years or the limitation of the Action, is to take two years for the extinction of the lien, and, although my friends from the United States are of the same opinion, if there is a strong opinion on the part of the other Nations that the period should be one year, we are quite content to take that period of one year with the other conditions that are mentioned in the Brussels text of the Collision Code.

Mr. JUDGE BRADFORD. — That will be entirely satisfactory to us.

M. F. C. AUTRAN *(président)*. — M. Justice Pickford a dit que quels que fussent ses sentiments personnels, en présence du courant d'opinions qui se manifeste de la part des nations continentales, ses amis anglais et lui et M. le juge Bradford seraient tous prêts à retirer leurs amendements et à se contenter du délai d'un an fixé par la Com-

mission de Paris, à condition que ce texte fut complété par des termes analogues à ceux qui ont été acceptés par la conférence diplomatique.

Je crois que c'est une bonne solution du problème et qu'il n'y aura pas de difficulté pour l'accepter.

M. GRAFFAGNI. — Sentite le dichiarazioni di Sir Wm Pickford e dell' on. presidente, non credo d'insistere nella mia proposta.

(*Traduction*)

En présence des déclarations de Sir Wm Pickford et de l'honorable président, je ne crois pas devoir insister sur ma proposition.

M. FILIPO ARTELLI. — Io avevo intenzione di parlare, ma ormai M. Le Jeune ha sviluppato la mia idea.

Il signor Brown, che sta in America, ha paura che il tempo trascorra troppo presto e domanda il termine di due anni ; ma io trovo più che sufficiente il termine di un solo anno.

(*Traduction*)

J'avais l'intention de demander la parole, mais M. Le Jeune a déjà développé ce que je voulais dire. M. Brown, qui est d'Amérique, craint que le délai est trop court, et il demande d'accorder deux ans ; mais je suis d'avis que le délai d'un an est plus que suffisant.

M. F. C. AUTRAN (*président*). — En présence de ces déclarations, je crois qu'il est inutile de passer au vote et que l'article 5 est adopté.

Mr. W. R. BISSCHOP (London). — I do not think, Mr. President, there can be any objection against following the precedent that has been adopted in Brussels ; but I wanted to point out, before debating, that the principle which is the basis of the Brussels Conference is absolutely different from the principle which is laid down

in Article 5. In Article 5 it is said that the maritime lien shall be prescribed ; in Article 7 of the Brussels Treaty it is said that the action shall die. Now the question is, if the action dies, what becomes of the maritime lien? Suppose I bring my action within two years or within one year — within the proper limit of time, but I cannot execute my Judgment, does my Judgment hold good — have I my maritime lien notwithstanding that, or is my maritime lien gone ?

M. LOUIS FRANCK. — There is no doubt about it. The one is the lien and the other is the right of action. The issue of a writ in an action is a cause of suspension of the prescription.

M. BENYOVITS (Buda-Pest). — Comme dans chaque loi commerciale, il y a deux prescriptions, la prescription absolue et la prescription des fins de non recevoir, disons que la prescription absolue est fixée à un an, et l'autre prescription à six mois à dater du jour où le créancier a pu agir.

M. F. C. AUTRAN (*président*). — Je mets aux voix l'article 5.

(*Adopté. — Carried*).

M. F. C. AUTRAN (*président*). — Nous arrivons donc à l'article 6, qui est conçu comme suit :

ARTICLE VI

Le privilège sur le fret ne subsiste qu'autant qu'il n'est pas encaissé par le propriétaire personnellement.	The lien on freight shall extend only to so much of the freight as has not been actually received by the shipowner in person.

Il ne faut pas perdre de vue que pour qu'il y ait lieu à exercer des privilèges il faut que l'on soit en face d'un

débiteur qui n'est pas solvable, qui n'ait pas de quoi vous payer complètement, car sinon, la raison du privilège n'existe plus. Et s'il a encaissé son fret et est insolvable, le privilège n'aidera à rien.

Nous avons inséré à dessein dans cet article 6 le mot « personnellement », parce que le fret est souvent — et même le plus généralement — encaissé par d'autres personnes que par le propriétaire. A l'heure actuelle lorsque le capitaine a débarqué sa cargaison, il s'en va, et ce sont généralement ses courtiers qui encaissent le fret pour lui. Ils l'encaissent il est vrai comme représentants de l'armateur, mais cela n'empêche qu'on ne puisse dire que l'armateur n'a pas encaissé le fret personnellement lorsque ce fret se trouve encore chez des agents ou des courtiers.

Les créanciers auraient donc la possibilité de faire saisir cet argent ou d'y mettre opposition.

M. EDZARD (Bremen). — Der Artikel bestimmt dass ein « Lien on freight » nur soweit bestehen soll als der Rheder die Fracht noch nicht eingezogen hat. Er bestimmt nicht was der Lien sein soll wenn der Rheder die Fracht eingezogen hat. Die Meinung der Kommission ist gewiss dass in solchem Falle der Rheder persönlich haften soll. Wie man aber nicht sagt dass der Rheder persönlich haftet und weil es sich handelt um eine unpersönliche Haftung auf der Fracht, schlagen wir vor, um jeden Zweifel zu vermeiden, dass wir dem Artikel zufügen :

« *The shipowner being personally liable up to the amount of freight actually received by him.* »

(*Traduction orale par* M. LOUIS FRANCK).

M. Edzard fait l'observation suivante :

L'article 6 dit : le privilége sur le fret ne subsiste qu'autant qu'il n'a pas été encaissé par le propriétaire personnellement. Mais que devient la situation du propriétaire et du créancier qui a ce privilége lorsque

le propriétaire a encaissé lui-même le fret. M. Edzard est d'avis qu'en pareil cas et à concurrence du montant du fret encaissé pour le voyage au cours duquel les créances sont nées, le propriétaire doit être tenu personnellement et il propose d'ajouter à l'article en discussion ce qui suit :

« ..... *le propriétaire étant tenu personnellement à concurrence du montant du* » *fret qu'il a reçu* ».

* * *

Dr. Edzard has said that it is quite natural to admit that for the amount realised the owner is to be personaly liable This will not be in opposition to the limitation of liability as fixed with regard to other things.

M. Leclercq (Bruxelles). — Ce sont les observations de M. le président qui justifient les remarques que j'ai à faire. Il vient de vous expliquer que lorsque le fret a été encaissé par le propriétaire, le privilège cesse d'exister ; que cela est tout naturel. Alors, pourquoi faut-il dire dans l'article 6 ce qui est tout naturel. Dans une loi, il ne faut rien dire qui soit inutile.

Je propose donc, — et ma proposition se justifie par ce qui vient d'être dit — de supprimer purement et simplement l'article 6 du projet.

(*Verbal translation by* Mr. Louis Franck)

M. Leclercq says that Article 6 might without difficulty, by omitted. M. Autran has mentioned, when once the freight is in the hands of the owner, it is part of the whole property of the owner, and then it is only the ordinary action that applies. Under these circumstances says M. Leclercq, article 6 might be dropped without any inconvenience and he mentions the maxim of law that it is better not to say things which are not absolutely necessary.

Sir William Pickford. — I must say I entirely agree with M. Leclercq that without this Article the effect would be the same. But I do not know that for that reason it is wise to out it out. It seems to me that sometimes it is advi-

sable to make quite clear what the meaning of your Treaty or Article is : and, if you leave this Article in, you do make it quite clear that the Treaty has the effect which, even without it, I agree with M. Leclercq, it would have. Therefore I cannot see any objection to its remaining in, but I take no strong line about that. What I should like to point out is this, that if the English translation correctly represents the French text, then, if it remains in, it certainly must be amended. What it says is : « The lien freight shall extend only to so much of the freight as has not actually been received by the shipowner in person ».

It might very wel be in our law that that might be interpreted to mean that if it had been received by his agent it had not been received by him ; and I am sure that was not the intention of the Article in any way. I think it should either be amended by putting in the words « actually received by the shipowner or his agent », or by substituting the words « received by the shipowner himself ». I am myself inclined to think that the best and safest words, if you keep in the Article would be to say « the shipowner or his agent ». If paid to the shipowner's agent and then handed over to the shipowner it might or might not be held to have been received by the shipowner in person. It is a matter entirely of redaction. I only want it to be made quite clear that so long as it has come to the hands of the shipowner substantially the lien does not attach, and whatever words are put in to effect that I shall be satisfied with.

(*Traduction orale par* M. LESLIE SCOTT)

M. Pickford vient de dire qu'à son avis, probablement le code aurait le même effet, même si l'article 6 disparaissait, mais qu'il pense qu'il est plus sûr et plus prudent de conserver cet article, pour exprimer sans aucun doute possible, que l'effet du code est bien celui exprimé dans l'article 6. Mais que le mot « personnellement », dans la traduction anglaise, est un peu obscur, et que l'interprétation en

Angleterre pourrait signifier le propriétaire et non son agent. Que sans doute le texte doit signifier « le propriétaire lui-même ». Il croit préférable que l'article dise « lorsque le fret est encaissé par le propriétaire ou son agent. »

M. FIAMBERTI. — Non intendo fare una proposta formale ; intendo puramente e semplicemente di rivolgere una preghiera al Comitato Permanente. Pregherei di esaminare se non fosse il caso di dare la pubblicità ai privilegi, per le stesse ragioni in base alle quali l'assemblea ha deliberato la pubblicità della protezioni.

Le stesse ragioni, secondo me, dovrebbero imporre la pubblicità anche ai privilegi.

(*Traduction*)

Je n'ai pas l'intention de faire une proposition formelle ; je désire simplement prier le Comité Maritime d'examiner s'il ne serait pas opportun de donner de la publicité aux privilèges pour les mêmes raisons pour lesquelles l'assemblée a décidé la publicité des hypothèques.

M. AUTRAN (*président*). — Je me permettrai de vous faire remarquer que votre observation, pourrait être transmise au Bureau permanent, mais ne se trouve pas du tout à sa place ici.

En somme, comme vous ne faites pas de proposition formelle, vos observations seront mentionnées au procès-verbal.

M. LEFEBVRE (Alger). — J'ai toujours professé cette opinion que le fret devrait être intégralement rapporté à la masse active qui forme le gage des créanciers, par tous ceux qui avaient le droit de le recevoir.

Néanmoins, cet article me laisse perplexe. J'attendais de la part des rédacteurs principaux de cet article des

explications qui pourraient me confirmer dans une opinion qui eut été étrangère à celle que je vous déclarais professer depuis longtemps. Or, les explications données par M. Autran ne m'ont pas satisfait. En effet, la raison d'être de l'article 6 est purement négative. Il s'agit de régulariser par un texte une situation d'insolvables. En d'autres termes, là où il n'y a rien, le roi perd ses droits.

Le dicton que je cite s'applique très bien ici : les créanciers n'auront pas le droit de réclamer à un propriétaire le fret échu, parce que ce propriétaire est insolvable. Il vaut mieux envisager l'hypothèse ou le propriétaire est solvable et où il a encaissé le fret. Quelle est dans ces conditions la situation singulière que crée l'article 6 ? On vous disait qu'il était conçu dans le but de prévenir le créancier qu'il ne doit pas agir contre un débiteur qui n'a rien. Mais si le débiteur n'est pas insolvable, le résultat de l'article 6 serait d'exonérer le propriétaire pour le montant qu'il a ainsi encaissé.

Je maintiens le principe que toute personne débitrice, qui a encaissé du fret, devrait en répondre personnellement.

(*Verbal translation by* Mr. Louis Franck)

M. Lefebvre is of the same opinion as M. Leclercq. He does not think it is worth while to retain Article 6 in the text. If you consider the position of the owner who has remained solvent, the Article is of no use to him : and if you consider the position of the owner who has become insolvent it is clear under the ordinary bankruptcy law that the creditor who has a privileged right can only exercise that right as long as the freight has not come into the general assets of the insolvent debtor.

Mr. Acland. — I desire only to say one word as a member of the Paris Committee in order to explain my recollection, which is very distinct, of what happened at

that Committee. The point which has been raised by Sir William Pickford was discussed at the Committee and the Article was drawn in the form in which it now stands « encaissé par le propriétaire personnellement ». That was done I think in spite of the objection of the English members to exclude the idea of the receipt of money by the agent not being the subject of the lien. I only wish to say that to explain the position which was actually taken at the Paris Commission, in order that this Conference may be perfectly clear as to what was intended by the words which are in the French text as it now stands. As to whether they are right or not I express no opinion at all.

(*Traduction orale par* M. LOUIS FRANCK).

M. Acland a fait observer qu'il était un des membres de la Commission de Paris et que ses souvenirs au sujet de l'article 6 sont fort précis. Cet article 6 a été inséré dans l'avant-projet pour bien marquer que le fret n'échappe au privilége que lorsqu'il a été encaissé par le propriétaire en personne.

M. AUTRAN (*président*). — Vous voyez, Messieurs, que l'article 6, n'était pas absolument inutile, et je crois que le texte proposé doit être accepté.

Il me paraît que l'argument de notre confrère est juste et sur ce point, il n'y a point de difficulté. Lorsque le propriétaire a encaissé le fret et qu'il est solvable, il faut qu'il le rembourse.

Mais lorsque le fret est encaissé par le propriétaire personnellement et qu'il est devenu insolvable, le créancier perd ses droits au privilége. Et ici, je signale ainsi que l'a dit M. Acland que ce fret peut bien être encaissé par un mandataire. Tant que l'argent n'est pas effectivement sorti de la caisse de ce mandataire pour entrer dans la caisse du propriétaire, les créanciers ont une action, et ont un recours quand on se trouve devant des personnes

solvables. Et si l'armateur est en suspension les créanciers peuvent faire pratiquer saisie ou opposition pour faire constater que le propriétaire n'a pas encaissé son fret personnellement.

Mr. LESLIE SCOTT. — If I may sum up very shortly the speeches which have been going on for some time, the point is that in French law when the money is in the hands of the ship's agent for collection, it is still subject to the lien. The freight is not outside the reach of the lien until it has got into the hands of the owner himself.

M. LOUIS FRANCK. — I will make this clear to our English friends from the point of view of the French law. Supposing £ 2,000 worth of freight was in the hands of an agent, and that the owner becomes insolvent and bankrupt; then the man who has a lien or privilege on that freight would have the right of enforcing his claim against that amount, and the other creditors could not rank *pari passu* with him. That is the substance of the French law on the point.

M. F. C. AUTRAN (*président*). — Mais il n'y a absolument rien d'incompatible, comme le dit notre collègue de Brême à dire que lorsque le propriétaire est solvable et qu'il aura encaissé le fret, il devra en tenir compte aux créanciers du navire et à dire d'autre part, que tant que l'argent ne sera pas entré dans la caisse personnelle du propriétaire, le fret demeurera comme une garantie entre les mains des tiers.

M. CLIFFORD J. CORY, M. P. — As a simple commercial man and not as a lawyer I must admit that I do not understand this Clause at all. As I understand it, it is admitted that a creditor with a maritime lien has a lien on

the freight ; but by this Clause he would be entirely deprived of his right, because Sir William Pickford has explained that the lien on freight would only extend to so much of the freight as has not been actually received by the shipowner or his agent.

Sir WILLIAM PICKFORD. — No — personally.

M. CORY. — It seems to me that if it was paid at the Port of loading it might be easy for the shipowner to stipulate that the whole of the freight should be paid at the Port of loading and then the creditor could not attach any of the freight. It would open that sort of door, and I know of cases in which the shipowner has insisted on three-fourths of the freight being paid at the Port of loading. That would be removed from the power of the creditor to attach it.

M. LESLIE SCOTT. — I may just add that this is the existing English Law.

(*Traduction orale par* M. LOUIS FRANCK)

M. Cory fait observer qu'à son sens, le texte n'est pas clair et parlant comme homme d'affaires, il ne le saisit point. Il fait remarquer que la clause n'a pas grand effet en tout cas, puisqu'il dépend de l'armateur de se faire payer le fret au port de charge.

M. LOUIS FRANCK. — Je pense que la solution la plus simple est celle qui a été appuyée par Sir William Pickford.

Il y a pour cela une raison de pratique, d'abord, et une raison de théorie, ensuite.

La raison pratique, c'est que vous avez dit, il y a un moment, que seront seulement privilégiées sur le fret les créances que vous énumérez. Si vous touchez à ce

principe dans cet article, il faut par le fait même vous occupe de régler la situation de l'agent. Mais alors vous vous trouverez devant une série d'autres privilèges de droit commun, celui de l'agent pour ses débours, par exemple.

Mais il y a la seconde raison, la raison de théorie. Cette question est avant tout une question de loi sur la faillite et sur concours entre créanciers. De sorte qu'en ce qui me concerne, je ne verrais pas d'inconvénient à la suppression de l'article 6 ; tout au moins pourrait-on référer au Bureau Permanent la question de savoir qu'il y a lieu de le maintenir ou de ne pas le maintenir.

M. EDZARD (Brême). — Ich möchte mir eine Bemerkung erlauben um die Aussagen des Herrn Franck zu beantworten. Nach userer Ansicht ist das nicht sogar selbstverständlich.

Die Sache liegt so : In unserm ersten Beschluss wurde gesagt : der Rheder hafte nicht persönlich, aber nur mit Schiff und Fracht; jetzt ist dies eingezogen; denn wenn wir dass annehmen sollten was mas man soeben proponirt, so würde die Folge sein dass die persönliche Haftung der Rheder doch thatsächlich besteht. Uebrigens könnten wir die Frage dem Bureau Permanent überlassen.

(*Traduction orale par* M. LOUIS FRANCK).

M. Edzard signale qu'au point de vue du droit allemand, la question en discussion ne va pas de soi et qu'il considère la question comme difficile dans un sens et dans un autre. Mais il est d'accord pour que les différentes considérations que l'on a fait valoir ici soient déférées au Bureau Permanent qui décidera s'il y a lieu de maintenir dans l'article ce qui se rapporte au fret ou s'il est préférable de le supprimer.

Mr. LESLIE SCOTT. — The English delegation agrees to send this last Article to the Permanent Bureau.

M. VAN MEENEN (Bruxelles). — Je crois devoir insister

au sujet de la suppression de l'article. L'organisation des privilèges, c'est une question de droit civil et une question de droit commun et nous ne pouvons pas faire un code spécial pour les privilèges. Aujourd'hui, il y a des distinctions d'ailleurs qui ont été signalées par les différents orateurs dans les diverses législations. D'autre part, on n'est pas d'accord sur le texte, sur la portée du texte ; j'insiste donc pour que l'article soit tout simplement supprimé.

Si l'assemblée décidait que l'article ne doit pas être supprimé, il conviendrait en tout cas de le renvoyer à la Commission Permanente. Mais si on le supprime d'emblée, ce que je propose, la question est toute résolue.

M. F. C. AUTRAN (*président*). — Je déclare le débat clos.

La conférence se trouve donc devant un amendement de M. Leclercq, supporté par M. Lefebvre et par M. Van Meenen, qui demande la suppression de l'article.

Je dois ajouter qu'après cet amendement radical dont je viens de vous parler, il y a un amendement plus opportun, présenté par Sir William Pickford, et qui consiste à renvoyer cette question au Bureau Permanent, pour examiner s'il y a lieu de maintenir ou de supprimer le texte de cet article.

Chorus : Renvoi au Bureau.

M. AUTRAN (*président*). — Tout le monde accepte le renvoi au Bureau ?

(*Assentiment unanime*).

M. F. C. AUTRAN (*président*). — Messieurs, je vous demande toute votre bienveillante attention. Divers membres à la séance d'hier, avaient émis leurs vues relativement à l'application de la limitation de la responsabilité

aux obligations résultant des contrats du capitaine, et vous vous rappelez qu'ils vous ont demandé à réserver leur opinion jusqu'à ce que l'examen de l'avant-projet de traité sur les privilèges fût terminé.

A l'heure actuelle, nous avons fait du chemin, nous retournons à l'article 2 de l'avant-projet sur la Limitation de la responsabilité. Et de cet article 2 dépend le sort et la portée des travaux de cette conférence.

Nos amis hollandais ont rédigé un projet d'article 2 nouveau qui a dû vous être distribué et dont le texte par conséquent, doit être sous vos yeux.

Je vais donner tout à l'heure la parole à M. Loder pour vous en donner connaissance et pour vous en faire un bref commentaire, mais auparavant je la donne à Son Excellence M. Capelle, représentant le Gouvernement belge et je me permets de vous demander de lui prêter toute votre attention.

Si quelqu'un a qualité ici pour parler de l'unification du Droit Maritime, c'est à coup sûr le représentant du Gouvernement qui a eu l'initiative dont l'histoire tiendra compte, l'initiative glorieuse de créer dans le monde ce mouvement d'unification du droit maritime dont nous tous nous n'avons été que les humbles auxiliaires et les modestes ouvriers; et par conséquent, lorsque la parole du Gouvernement belge se fera entendre ici, vous voudrez bien l'accueillir avec confiance et tenir des paroles du très distingué représentant du Gouvernement belge tout le compte qu'elles méritent.

Le Gouvernement anglais a subordonné son adhésion aux futures conférences diplomatiques à la condition de pouvoir adopter en même temps un code uniforme sur la limitation de la responsabilité et sur les privilèges et hypothèques maritimes, et il faut donc que nous puissions achever le travail confié à cette conférence et donner au

Gouvernement belge le moyen d'obtenir l'adhésion des autres Puissances.

(*Verbal translation by* Mr. Leslie Scott)

I do not think I need do more than put very shortly the point mentioned by the President. He points out that yesterday we decided to leave Article 2 until after we had finished with the Liens Code; that we have now finished with the Liens Code, and that in view of the approaching Diplomatic Conference on the Collision and Salvage Code it is desirable to complete the work on this Code in order that the Belgian Government may be in a position to bring before the Diplomatic Conference these two Codes as well as the Collision and Salvage Code.

M. Capelle (Bruxelles). — Messieurs, les termes beaucoup trop aimables pour moi, employés par l'honorable M. Autran, au moment où il me donne la parole, ajoutant à la confusion que j'éprouve à me faire entendre après notre éloquent président.

Je suis venu parmi vous avec un double mandat.

L'un m'avait été conféré par le Gouvernement belge ; il consistait à suivre attentivement vos débats, à me documenter au contact des professionnels du droit maritime et à rapporter à Bruxelles des appréciations motivées sur les questions importantes inscrites à votre programme. La manière dont les discussions ont été conduites et la haute compétence des membres m'auront permis, je l'espère, de m'acquitter complètement de cette partie de ma mission.

Quant au second mandat, je me l'étais imposé moi-même, à raison du grand intérêt personnel que je porte à vos travaux. Ayant eu l'honneur de présider la Commission qui fut instituée au sein de la Conférence diplomatique, tenue à Bruxelles en octobre 1905 et ayant eu l'occasion de constater alors combien on assure la bonne marche des discussions en les faisant porter sur des pro-

positions précises, je m'étais dit que je m'appliquerais à attirer, le cas échéant, votre bienveillante attention sur les mesures qui paraîtraient de nature à faciliter l'œuvre de la prochaine Conférence diplomatique.

Au moment où vous allez terminer vos travaux, vous me permettrez, Messieurs, de vous faire, dans cet ordre d'idées, une double suggestion.

Les avant-projets d'arrangements qui avaient été élaborés en vue de la réunion actuelle subiront vraisemblablement, en suite des discussions, certains remaniements. Il vous paraîtra sans doute, comme à moi, désirable que les Gouvernements intéressés qui ont eu connaissance des textes primitifs reçoivent, en même temps que la nouvelle rédaction, un exposé précisant nettement la raison d'être et la portée de ces changements. On préviendra ainsi de nouvelles controverses sur des projets mûrement examinés ici.

D'autre part, il me paraît, Messieurs, que, vu les circonstances spéciales dans lesquelles nous nous trouvons, vous pourriez préparer plus directement encore le travail de la future conférence diplomatique.

Je m'explique.

Lorsque l'on a à discuter, dans un congeès libre, des questions d'intérêt international, chacun des membres expose sa manière de voir et si, avant de cloturer la session, l'on procède à un vote, on considère comme représentant l'opinion du congrès celle qui a réuni la majorité des suffrages.

Il en est autrement dans les Conférences diplomatiques où, à raison de la souveraineté des Etats, on ne peut imposer à la minorité, si minime fût-elle, les décisions de la majorité.

Il en résulte, Messieurs, que si vous vous séparez après avoir adopté à la majorité des voix les projets d'arange-

ments à soumettre aux gouvernements, vous aurez accompli une œuvre, utile sans aucun doute, mais insuffisante pour assurer un résultat pratique immédiat. Lorsque la Conférence diplomatique sera saisie de ces projets, elle aura à chercher le terrain d'entente que la réunion actuelle n'aura pas trouvé malgré les hautes compétences dont elle dispose. Cette tâche ne sera pas exempte de difficultés et elle impliquera nécessairemeat des retards peu désirables au point de vue de la solution que nous appelons de nos vœux.

Bien différente serait la situation si, conscients du rôle important que vous pouvez remplir, vous vous considériez, Messieurs, comme les collaborateurs attitrés de la Conférence diplomatique.

Au cours de brillantes discussions, vous avez défendu avec conviction les idées qui ont vos préférences. Sur un grand nombre de points l'accord serait aisément réalisé : sur d'autres, les divergences sont plus accentuées. Néanmoins, tous vous reconnaissez que la règlementation internationale uniforme de l'ensemble de ces questions sur les bases qui répondent aux désiderata de la majorité, constituerait un progrés marqué sur l'état de choses actuel.

Pourquoi n'affirmeriez-vous pas dès maintenant cette solidarité et cette communauté de vues, en chargeant votre bureau de vous soumettre des formules de conciliation ? On aboutirait ainsi à une combinaison qui serait pour les uns une solution presque parfaite, pour d'autres, une transaction honorable, mais qui, aux yeux de tous, réaliserait incontestablement, comme je viens de le dire, un progrès sur la situation présente.

A ce titre, elle pourrait rencontrer l'approbation unanime.

Si, ainsi que je me permets de vous y convier, Messieurs, vous adoptez cette attitude, vous ferez faire un pas décisif à une œuvre internationale qui vous est à tous également

chère et vous pourrez vous rendre le témoignage que vous avez largement contribué au succès de la prochaine conférence diplomatique.

(*Longs applaudissements.*)

(*Verbal translation by* MR. LESLIE SCGTT).

M. Capelle says he was sent by the Belgian Government to attend the Conference and to report back to his Government upon the work done at the Conference. He says that when the permanent Bureau have drawn up their further report and altered the wording of the two Drafts according as it may seem necessary, it will be desirable for them, in communicating with the Belgian Government, to send an *exposé des motifs* pointing out what changes they have made in the Drafts as settled at Venice, and the reasons for those changes. Having dealt with these points of procedure he, in an eloquent way, expressed the opinion that it is most desirable in order to strengthen the hands of the Diplomatic Conference, that at the end of the Conference here at Venice, unanimity of opinion should be expressed in some formal manner which can be transmitted to the Belgian Government. He pointed out that, of course, on one Article, one section of the Conference might have got what was in their view exactly an ideal form ; but to others it may have been a *pis aller ;* that nevertheless at the end of all we may recognise that the compromise represented by the terms agreed upon is a reasonable compromise and ought on the whole to be accepted, and may on the whole be regarded as altogether satisfactory. And he suggests that that view may easily be expressed unanimously to the Belgian Government by passing a resolution at the end of the Debate.

M. F. C. AUTRAN (*président*). — Je donne la parole à M. Loder pour lire l'amendement à l'article 2.

M. LODER (Rotterdam). — Nous avons commencé hier la discussion sur cet article. Je vous ai lu notre amendement ; je l'ai introduit auprès de vous et mon ami et collègue M. Asser, vous l'a expliqué. La forme actuelle diffère de la première par quelques expressions. Nous avons précisé ce que nous avons voulu faire. Nous avons cru

que l'expression les « *faits du capitaine* » n'exprimait pas suffisamment ce que l'on avait eu en vue et qu'il fallait nommer expressément les obligations, soit conventionnelles, soit légales.

J'ai demandé la parole maintenant pour vous expliquer quelques changements que nous avons apportés à l'amendement dans sa première forme.

L'amendement que nous proposons maintenant est conçu comme suit :

Le propriétaire du navire n'est pas tenu personnellement, mais seulement sur le navire, le fret et les accessoires du navire afférents au voyage, des obligations, soit conventionnelles, soit légales, autres que celles touchant aux dommages causés à des personnes, contractées sans l'autorisation spéciale du propriétaire, par le capitaine, l'équipage ou toute autre personne assistant le capitaine dans le service du navire et dont le propriétaire répond.

The owner of a vessel shall not be personally liable, but shall be liable only to the extent of the value of the vessel, of the freight and of the accessories appertaining to the voyage for all obligations, other than those in regard of personal injury, resulting from contract or law, incurred without express instructions of the owner by the captain, crew or any other person, assisting the captain in the service of the vessel, and for whom the owner is responsible.

Nous avons donc ajouté au texte français les mots : « *et dont le propriétaire répond* », et au texte anglais : « *and for whom the owner is responsible* ».

Nous croyons ainsi avoir fait tout ce qu'on pouvait faire pour satisfaire nos amis américains. S'il en était autrement, qu'ils le disent : nous sommes tout prêts à accepter les modifications de forme qu'ils pourraient désirer, puisque nous sommes d'accord sur le fond.

Pour nous, le nœud de l'affaire, ce sont les obligations contractuelles.

Après la séance d'hier, j'ai eu l'honneur d'avoir une conversation avec quelques-uns de nos collègues anglais. J'ai

eu l'impression que l'on croyait que nous voulions ouvrir la porte aux propriétaires qui veulent échapper à leurs obligations conventionnelles contractées par *eux-mêmes*. Mais telle n'est pas du tout notre intention, et je ne crois pas qu'on trouve cette énormité dans aucune loi existante. C'est pour mettre ce point hors de toute question que nous avons ajouté les mots « *contractées sans autorisation spé-* » *ciale du propriétaire, par le capitaine* ».

Je crois donc que nous avons fait tout ce que l'on peut désirer sous ce rapport.

Une dernière observation que nous voulons faire est celle-ci : C'est que l'on trouve dans le texte original du traité : « aux digues, quais, et autres objets fixes ». Cela n'a plus de raison d'être dans le texte proposé dans notre amendement.

Quant à nos amis allemands, je ne sais quelle est leur opinion, mais j'espère qu'ils pourront nous rencontrer sur ce texte.

* * *

I will try to explain in English what I have said. I have said that for treating the whole subject, it was sufficient after what I have said before to point out some alterations we had made in the text. The first alteration was made in consideration of the remarks of our American friends and in order to meet their views as regards an unlimited personal liability. Further we added the words « And for whom the owner was responsible » which were suggested to us by M. Le Jeune. Then the principal point is on these words « For all the obligations other than those in regard of personal injury, resulting from contract or law ». I pointed out that all the Continental Nations have considered it is absolutely necessary ; and finally I said that the enumeration we found in the original

text of Articles 1, 2 and 3 would be of no use when we had made this amendment. I will now read the text as amended : « The owner of the vessel shall not be personally liable but shall be liable only to the extent of the value of the vessel of the freight and of the accessories of the vessel appertaining to the voyage for all obligations, other than those in respect of personal injury, resulting from contract or law incurred without express instructions of the owner, by the Captain, Crew or any other person assisting the Captain in the service of the vessel and for whom the owner is responsible ».

Mr. BROWN (New-York). — I wanted to enquire whether the Committee (the matter having been referred to them) is ready with their report. As far as any agreement of the American delegation is concerned I should like to say that certain modifications have been handed to me by the delegation from the Netherlands, and I have told them that their suggestions would be reported by me to that Committee when it meets.

Mr. LESLIE SCOTT (London). — The reference to the Committee was as to the words « personally liable », and that was a question of *redaction*. The question under discussion now is the general question of the number of obligations which are to be subject to the limitation. The final wording of this Article cannot be settled to-night, and the President does not intend it to be.

SIR WILLIAM PICKFORD (London). — I do not think this matter can, as a matter of editing, at any rate be finally settled to-night. The two important questions we discussed on this Article as far as I remember were first the the one raised more especially by the delegates from the United

States which consisted in an objection to the abolition of personal liability, and that I understood from them was a constitutional question. That seems to be very much met by the alteration in the wording in the print, which Mr. Loder has mentioned. The other matter was a question of whether the limitation of liabilité was to be extended to obligations of contract beyond, of course, the limitation which existed in the Article as settled at Paris. Well, we were of opinion (and I do not think we have very much changed our opinion) that such things as necessaries and so on should not be subject to limitation of liability ; but it has been well said by several people during the last three days that we do not want to insist each one of us upon what he himself thinks is right ; we want to have the whole Code settled if possible in a way that everybody can agree to. And on consideration, although we should prefer our own views, still we are not going to insist upon them with regard to that matter. Therefore in principle I think probably the matter is settled. But I should like to point out that there are some serious questions of editing upon this which will have to be considered, for instance I will take this one : « All obligations other then those in respect of personal injury resulting from contract or law incurred without express instructions of the owner, by the Captain ». Now you know the vast majority of Charters contain a Clause that the Captain is to sign bills-of-lading according to instructions. If he signs a bill-of-lading under those circumstances, is he to be held to have signed them under express instructions within the meaning of this Clause, and is the shipowner in that case to lose the benefit of all limitation whether to £ 8 a ton or anything else ? I do not know whether that is meant or not — I should think not — but that is one of the matters which, as it seems to me, are very important, and which will have to be considerd in arriving

at the exact wording of this Article. Therefore I think it will be wise (although I agree that in principle the matter is settled) if this matter were to be taken up to-morrow morning when we have had the opportunity of more particularly considering the wording of the Article in order to see that it does not involve something that none of us means to be involved, and I suggest that that should be done to-morrow morning.

(*Traduction orale par* M. LESLIE SCOTT)

M. Pickford vient de dire que la discussion roule tout particulièrement sur le mot « personnel » dans cet article et aussi sur la question des contrats et obligations qui sont visés dans le 1° de l'article 2; que probablement nous sommes d'accord sur le fond de l'article 2; mais qu'il y a beaucoup de questions de rédaction qu'il reste à arranger et qui n'ont qu'une importance relative. Par conséquent, M. Pickford conseille de déférer la considération finale de cet article jusque demain matin; il pense que d'ici là, nous pourrons trouver une rédaction convenable plus facilement que ce soir.

M. LESLIE SCOTT (Londres). — Je suggérerais à la conférence qu'il vaudrait beaucoup mieux de suivre la rédaction de la Commission de Paris et celle de Liverpool et d'ajouter ce qu'il y a de nécessaire, au lieu de transformer entièrement la rédaction.

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May I add for myself that I have suggested to the Conference that it will be much better to follow the *redaction* adopted at Paris and at Liverpool and to add what is necessary instead of transforming the whole of the language of the *redaction*.

M. F. C. AUTRAN *(président)*. — Je crois que vous vous féliciterez comme moi des paroles prononcées par Sir

William Pickford. En somme, vous vous rappelez que hier, la question la plus sérieuse était celle de savoir si la limitation s'appliquerait aux contrats et aux engagements contractuels conclus par le capitaine. Je suis heureux d'apprendre que Sir William Pickford nous annonce au nom de ses compatriotes que tout en ayant leurs préférences, ils sont tout disposés à rencontrer les vues opposées dans un esprit conciliant.

D'autre part, je serais également heureux que pour éviter les difficultés dont nous ont fait part nos amis américains, on puisse trouver une formule de nature à les satisfaire.

Au fond j'estime que nous sommes d'accord : c'est un fait que je suis heureux de pouvoir constater et nous devons en attribuer le mérite à l'esprit de courtoisie de conciliation et d'intérêt pratique qui n'a cessé d'animer tous les membres de la conférence.

Je suis sûr que la politique suivie est la bonne et qu'elle nous mènera à cette entente et à cette harmonie dont M. Capelle vous parlait tout à l'heure.

La séance de demain ne commencera qu'à 10 heures, afin de permettre aux membres du Bureau de trouver une rédaction qui donne satisfaction à tout le monde.

(*La séance est levée. — Sitting adjourned.*)

SÉANCE DU SAMEDI, 28 SEPTEMBRE 1907
SITTING OF SATURDAY, SEPTEMBER 28th, 1907

PRÉSIDENCE DE M. ALB. MARGHIERI
M. ALBERTO MARGHIERI IN THE CHAIR

La séance est ouverte à 10 heures
The sitting is opened at 10 o'cl. a. m.

M. MARGHIERI (*président*) — Pendant que l'on prèpare la formule sur la responsabilité, nous entamerons la question des conflits de lois en matière de fret.

M. LOUIS FRANCK (Anvers). — The President has just announccd that until the Sub-Committee is ready with the Draft of Article 2 of the Limitation Code, it appears reasonable not tot delay the general business of the Conference but to make a start with a general discussion on the question of freight; and he is going to call upon Dr. Schaps to address us upon this subject.

Conflit de lois en matière de fret.
Conflicts of law as to freight.

M. le Dr. SCHAPS (Hambourg). — Messieurs, je vais être bref. Je puis l'être, car tout ce que j'ai à vous dire est déjà contenu dans mon rapport sur le *Fret*.

Ceux qui ont lu ce rapport auront vu que je ne trouve pas nécessaire une solution internationale pour la question

du fret sur le vide, pour la question du demi-fret et pour la question des surestaries.

Mais une solution internationale s'impose pour la question du fret proportionnel.

Vous aurez vu que j'ai comparé le système franco-allemand avec le système anglais qui est anti-juridique et que je propose quant à moi ce simple moyen que j'appelle « le fret d'équité ».

Nous avons à présent tous les matériaux, mais je crois que la question n'est pas encore assez mûre pour être résolue dans cette conférence. Je vous propose donc de renvoyer la question à une Commission qui vous présentera, pour la prochaine conférence, un avant-projet de traité.

(Verbal translation by Mr. BETOCCHI.*)*

Dr. Schaps said that he was of opinion after studying the question that on certain points international regulations are useless but that as regards pro rata freight a conception of freight based upon equitable considerations should be introduced by international agreement. He thinks that the question was not sufficiently advanced in its consideration by the different Nations to be decided upon at this session of the Conference. He proposes, therefore, to send over the consideration of this important question to a Sub-Committee who sould report the result of their labours to the next Congress.

M. BENYOVITS (Buda-Pest). — Je crois que la question du fret doit absolument être traitée internationalement et cela sans retard, puisqu'il s'agit ici du commerce maritime mondial. C'est pour ce motif que j'aimerais à parler en général sur la question du fret.

Il est un principe général que l'une des parties contractantes ne peut exiger l'accomplissement du contrat que lorsqu'elle a elle-même exécuté les obligations qui lui incombaient. Il en est de même des contrats d'affrètement.

Le capitaine s'oblige à transporter des marchandises d'un port à un autre et l'affréteur promet en échange de payer le fret du connaissement. Si le fréteur, c'est-à-dire le capitaine, ne transporte pas la marchandise au lieu de distination, il n'a pas exécuté le contrat, et par conséquent il n'a pas droit non plus d'exiger de l'affréteur le payement du fret. Cependant, il peut arriver qu'un navire a déjà accompli une grande partie du voyage, mais ne peut pas l'achever et cela pour des raisons qui sont absolument en dehors de la faute du capitaine. Par exemple, en cours de route, un navire subit des avaries tellement graves qu'il doit chercher un port de refuge pour y effectuer des réparations. Dans ce cas, le capitaine est obligé de faire réparer le navire et l'affréteur doit attendre, sans que l'on ait droit à des dommages-intérêts ni de l'une, ni de l'autre part. Si le capitaine ne peut faire réparer le navire, il est tenu d'en louer un autre pour transporter la marchandise à destination et l'affréteur est tenu de payer le fret entier. A cet égard, les législations sont concordantes. Des divergences se manifestent seulement quand le capitaine ne peut pas louer un autre navire pour conduire les marchandises à destination Et voici les divergences.

Ceux qui ne veulent pas admettre le fret proportionnel se basent sur les principes stricts du droit romain. On ne veut pas accorder de fret *pro rata itineris* parce que le transporteur n'a pas accompli son obligation. Tout d'abord, je mentionnerai la loi anglaise, le code de commerce belge et les règles de Sheffield. Cependant cette règle résulte de l'intention de vouloir appliquer les principes stricts du droit romain. Mais dans les rapports juridiques plus modernes, le contrat d'affrètement ne peut pas être jugé d'après les règles du droit romain, parce que ce n'est pas un contrat de louage de services : c'est un contrat d'une conception plus moderne, un contrat de transport.

En effet, si l'on prend en considération qu'un navire qui a commencé le voyage, ne peut pas l'achever, alors que les marchandises sont déjà tout près de leur destination et que l'affréteur a déjà retiré du voyage un avantage considérable, je ne crois pas qu'il est logique de pouvoir dénier au capitaine le droit à son fret, sinon au fret entier, au moins à un fret proportionnel. En ce sens disposent la plupart des législations. C'est dans ce sens que disposaient les anciennes règles de Wisby (art. 16), l'Ordonnance française de 1681, article 11. Dans ce sens disposent aussi les nouveaux codes français (art. 296), allemand (630), italien (570), etc.

Ceux qui ne veulent pas accorder de fret *pro rata itineris* objectent que lorsque le navire ne peut achever le voyage, l'affréteur n'a aucun profit ; qu'au contraire, avec les frais de chargement et de déchargement, il a encore un grand désavantage, et que surtout lorsque l'affréteur doit vendre sa marchandise dans un port intermédiaire, il ne reçoit pas la valeur qu'il avait calculée comme devant être obtenue au lieu de destination. Ils peuvent avoir raison dans certains cas, et c'est pourquoi notre Association propose de n'accorder le *fret pro rata itineris* que lorsque le voyage interrompu a procuré un avantage à l'affréteur. Il n'est dù au contraire aucun fret lorsque l'affréteur prouve que le trajet accompli ne lui procure aucun profit. Dans ce sens disposent le Code allemand (§ 631) ; dans ce sens dispose aussi notre projet de loi de 1894, préparé par M. Nagy, professeur de droit à la Faculté (art. 133).

Il semble même que la jurisprudence anglaise a déjá fait un grand pas en ce sens en reconnaissant comme valable la convention par laquelle les parties admettent le fret *pro rata itineris* et accorde ce fret lorsque le chargeur retire ses marchandises au lieu d'attendre les réparations

du navire. Je pourrais même citer un jugement de Lord Mansfield qui est très intéressant à ce sujet.

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I will repeat in my bad English what I have just said in French : It is a general principle that one of the contracting parties may claim the fulfilment of the contract only in the case where he has carried out his own part of it. It is the same with charter parties : the master undertakes to carry the goods from one port to the port of destination, and the freighter binds himself to pay the freight contracted for. If the shipper does not carry the goods to the place of their destination, he does not fullfil his obligation, and he has no right to demand the freight from the consignor. Meanwhile it may happen that the ship has gone a great part of the voyage, but the Captain, from no fault of his, is unable to complete the voyage commenced : For instance the ship may have suffered some injury, in which case the Captain is obliged to have the ship repaired, and the freighter is obliged to wait, without any indemnity of one party to the other. If the ship be not repaired the Captain is compelled to hire another ship, and the charterer is compelled to pay the whole freight. Every legislation deals with the matter in this way ; the only difference that we see is when the Captain does not hire another ship to complete the voyage. According to the general rule no freight is due to the Captain if he does not fulfil his own obligation. This is in accordance with English Jurisprudence, the Belgian Code, and the rules of Sheffield. Those who would not admit the freight *pro rata itineris* found themselves on the Roman law. The mistake is that they would apply the strict rules of the Roman law to modern legal conditions. You cannot construe the contract of the charter

party upon the principles of contracts for hire of service, because the charter party is quite a modern contract, And really if the goods have been carried a great part of the voyage, and they have partly, or very nearly reached their destination, and the freighter has already gained a profit, you cannot deny the right of the Master to claim at least the part of the freight corresponding to the voyage executed. Suppose I make a contract with an Architect to build me a house of four floors, he would get the price of the building after he had handed me the key. He constructs the house, but for some reason, through no fault of his own, he cannot finish the painting. He hands me the key and asks me to pay him for so much of the work as has been executed. If I refuse to pay anything because he has not fulfilled the entire contract I cannot imagine that any Judge would hold that I am right. If you hire a ship to take goods from London to Tokio, and it nearly completes the voyage but cannot get further owing to some injury suffered from no fault of the Master, and the Master cannot find another ship to finish the journey, I ask if the freighter has not a profit on the voyage already executed? And if he has a profit, is it not logical and just that the shipowner should also earn something? The English law notices the injustice I have pointed out, and in dubious cases awards the freight *pro rata itineris*.

Dr G. Martinolich (Trieste). — Noi dell' Associazione austriaca, relativamente alla proposta del Dr. Schaps, crediamo inutile entrare nel dettaglio della questione dopo che l'ha giâ fatto esaurientemente un altro oratore. La questione del dott. Schaps è pregiudiziale, per cui, dal momento che siamo d'accordo e che non potremmo giungere ad un risultato pratico nella questione dei noli, faccio proposta che dalla Conferenza internazionale venga

innanzi tutto decisa la proposta pregiudiziale del dott. Schaps.

Mr. JUDGE BRADFORDT (United States). — It seems to me the subject of reconciling the conflict of laws in the matter of freights is so large that in the limited time at our disposal it can hardly be discussed satisfactorily. I therefore move that, instead of devoting further time at present to the consideration of that question, a Committee be appointed to consider it and report to the next Conference, and that that Committee be requested to obtain an expression of opinion from the various national Associations upon the subject.

M. B. C. J. LODER (Rotterdam). — Dès le commencement des discussions sur les questions concernant le contrat d'affrètement, je demande la permission de soulever une question préalable et de soumettre à la Conférence quelques observations là-dessus.

Le questionnaire commence par poser la question générale : Comment seraient à régler internationalement les conflits de loi en matière de fret ?

L'expression me semble donner lieu à des doutes.

Si on avait eu en vue un travail pareil à celui qui a été accompli et qui s'accomplit encore à la Haye, aux conférences de droit international privé, les questions auraient dû être posées d'une manière différente.

En ce cas, le règlement international aurait dû s'occuper exclusivement de droit obligatoire et d'ordre public, sur la matière du fret.

Mais alors, le domaine des discussions serait probablement très restreint, parce que le contrat d'affrètement est essentiellement libre et la seule contrainte connue et acceptée jusqu'ici par les législations et le commerce inter-

national se trouve dans les règles assez simples de la loi américaine, le *Harter Act*.

Toutefois, les questions posées par le Comité Maritime International nous montrent que ceci n'a été nullement l'idée du Bureau Permanent. Bien loin de là : on a voulu étudier et se mettre d'accord sur les questions qui se rapportent au règlement du contrat d'affrètement lui-même. On va entreprendre un travail d'une très grande étendue et pour le moment, on n'aborde que quelques questions éparses, questions de très grande importance, mais qui au fond, n'embrassent qu'une partie relativement petite de la matière entière. Je le constate et je l'applaudis.

L'excellente étude de M. Adam nous montre que pour chacune des questions posées, des solutions diverses sont trouvées dans les législations différentes ; mais elle nous montre aussi que les divers points à discuter ne forment que des détails du règlement total du contrat.

Nous voyons dans cette étude que toutes ces dispositions légales n'ont force de loi entre les parties que pour autant qu'elles n'y ont pas dérogé, et enfin, — ce qui est peut-être le plus important, — c'est qu'une telle loi n'existe pas même en Angleterre, le grand pays auquel nous devons tout le développement moderne de ce contrat, qui a dû être modernisé tout à fait pour se conformer aux exigences des modes de transport et du commerce international de nos jours.

Il me semble nécessaire que nous nous rendions bien compte de ce que nous allons faire.

Ce ne sera pas exclusivement de régler internationalement des conflits de loi.

Mais quoi alors ?

Voulons-nous essayer de faire adopter par les différentes législations une loi uniforme sur le contrat d'affrètement ?

A ce point de vue, les questions posées se comprennent.

Ce sont alors les premières d'une longue série d'autres questions. Après celles-ci, on aura à s'occuper des clauses des connaissements, de la forme et du contenu des charter-parties pour les différentes sortes de transports. On aura à envisager la nature du contrat pour le transport par des lignes régulières, si différent de celui pour des vaisseaux affrétés pour un seul voyage. On va s'occuper du *time-charter*, de la différence des contrats pour le transport de marchandises et de personnes et d'une quantité d'autres questions trop nombreuses à énumérer.

Et ensuite, on aura à faire un tout de ce que l'on aura décidé sur chaque question.

Mais alors il me semble évident que ce que nous allons faire maintenant diffère essentiellement de ce que nous avons fait jusqu'ici.

Lorsque nous nous occupions de la responsabilité de l'armateur, nous avions compris parfaitement que le concours des gouvernements nous était indispensable ; qu'il fallait unifier les diverses lois parce que le fond de cette responsabilité, c'est la loi elle-même. Elle est telle qu'elle est, parce que la loi l'a constituée ainsi.

Lorsque nous avons traité de la compétence, c'était la même chose : c'est encore la loi qui crée le droit. Donc, ce sont les lois qu'il faut unifier.

Et quand enfin, nous examinions l'abordage et l'assistance, c'était toujours de même, parce que la matière trouve son origine dans le quasi-délit et le quasi-contrat, qui n'existent comme obligations que par les dispositions de la loi elle-même.

Mais la matière qui nous occupera dorénavant appartient au domaine des contrats, c'est à dire au domaine où la loi ne lie les parties que pour autant qu'elles n'y ont pas dérogé. A moins qu'il ne s'agisse de droit obligatoire, de dispositions d'ordre public — et je pense ici au Harter

Act — la loi n'a pour ainsi dire qu'une valeur subsidiaire.

Et encore, je puis vous rappeler à la mémoire qu'actuellement, cette « Harter Act » clause est insérée dans un très grand nombre de connaissements, par la seule volonté des parties, parce qu'elles en reconnaissent la parfaite équité.

Il me semble que ces considérations sont de nature à modifier notre manière de travailler pour la matière dont nous nous occupons actuellement.

Les grandes assemblées, comme le sont généralement nos conférences, peuvent discuter et résoudre les grands principes, comme nous avons l'intention de le faire à cette heures. Elles devront s'abstenir de discussions sur des détails ou des questions de rédaction subtile et précise. Elles peuvent faire et discuter aussi des projets de traité, importants quant aux principes, mais relativement simples quant à la forme.

Ces traités n'épuisent point la matière, et une fois qu'ils sont acceptés et ratifiés, le législateur national se met à l'œuvre pour élaborer et perfectionner ce que le traité a fixé et lui prescrit.

Mais si nous voulons faire ici quelque chose de définitif, faire une œuvre complète, il nous incombera de faire le modèle du contrat pour les parties, qui elles-mêmes, resteront toujours libres.

C'est à nous de faire des modèles de connaissements, de charte-parties, á nous de régler le time-charter, les *through-bills-of-lading* ; à nous de régler les transports par lignes directes ; à nous de régler les transports de personnes et à nous de composer les Règles d'Affrètement du Comité Maritime International, comme nous possédons déjà les York-Antwerp Rules.

Il n'y a pas, à l'heure qu'il est, une uniformité de lois à l'égard du règlement d'avarie grosse. Et cependant, cette unité existe ; elle est créée par ces Règles d'York et

d'Anvers, parce que les parties en ont fait leur propre droit à elles.

Depuis longtemps, les assureurs ont fait la même chose, par exemple en Allemagne, par les *Allgemeine Seeversicherungsbedingungen*. La navigation sur le Rhin, à part des lois et des traités, est réglée par des coutumes codifiées et déposées.

Pourquoi ne ferions-nous pas de même ?

Nous savons par expérience que la voie des traités est une voie longue et pénible ; après dix ans de travail pas un fruit tout à fait mûr n'a encore été cueilli.

Et maintenant, nous pouvons nous passer du concours des États et des législateurs. Ce qui raisonnablement, peut être considéré comme d'ordre public, nous pouvons nous-mêmes l'insérer dans nos contrats. Pourquoi donc ne pas suivre ce chemin ?

Nos conférences pourront et devront discuter et arrêter les grands principes, indiquer, approuver, rejeter. Mais un travail tout fait doit leur être présenté ; un travail qui embrasse la matière entière. Eh bien, Messieurs, à mon avis, ce travail devra être déféré à une Commission internationale et permanente dans laquelle tous les intérêts sont représentés ; commission composée de juristes, d'armateurs, d'assureurs et de grands commerçants, qu'on trouvera parmi les membres de nos associations nationales. Cette commission devrait travailler sous les auspices du Bureau Permanent, mais en même temps être et se sentir parfaitement libre.

On a essayé auparavant, comme vous vous en souvenez, de faire ce que je viens d'esquisser ici en grandes lignes, dans les Sheffield Rules. Ces Sheffield Rules n'ont pas eu de succès : ni un présent, ni un avenir. Mais pourquoi ? Pour deux raisons. D'abord, parce que ces règles ne formaient point un ensemble complet et n'étaient en somme

que l'énonciation de quelques principes, et ensuite, parce qu'il manquait un milieu constant, une organisation solide pour les élaborer et les faire accepter.

Or, Messieurs, le Comité Maritime International est justement ce qu'il nous faut pour atteindre le but proposé. Ce milieu maintenant est là, et pendant dix ans de travail assidu et sérieux, il a prouvé qu'il possède la vitalité nécessaire pour en venir à bout.

Finalement, permettez-moi de vous signaler un très grand avantage que nous obtiendrions en procédant comme je viens vous le proposer. Le contrat d'affrètement est par sa nature un contrat très vivant, très variable et mobile, parce qu'il est destiné à s'adapter toujours aux exigences actuelles de la pratique. Il doit donc exister la possibilité de toujours le tenir au courant de cette vie commerciale pour laquelle il a été fait. Il faut prendre bien soin qu'il ne soit jamais pétrifié.

Si nous comparons les diverses législations existantes sur les contrats d'affrètement telles qu'elles sont à présent, il est difficile de réprimer un sourire. Ces législations sont toutes arriérées et insuffisantes sous tous les rapports.

C'est l'Angleterre qui a développé et élaboré le contrat à sa hauteur actuelle — c'est-à-dire, précisément le pays où la loi fait défaut !

Et si après 15 ou 20 ans, nous avions la satisfaction de voir accepter nos règles par un traité international, soyez convaincus, Messieurs, qu'il serait arriéré et démodé à l'heure même de sa naissance.

Voilà ce que j'appelais la question préalable. C'est la nomination d'une commission que j'ai l'honneur de proposer à cette Conférence.

(*Verbal translation by* Mr. LOUIS FRANCK).

M. Loder has just said that the matter he has to lay before us on his conflict of laws is something which requires to be defined by

contract. He proposes shortly that a Sub-Comittee should prepare a general mode of Rules of Affreightment which model should be created in a special atmosphere where all interests should be represented — Shipowners, Underwriters, Lawyers, etc ; and he says that it could nowhere better be done than by the Bureau of the Comité Maritime; because if such a model were not prepared by practical people, by the time it was published to the world it would be already too old to answer to the necessities of the moment. His proposal is therefore to submit to the Bureau of the Comité Maritime the appointment of a sub-commission for the preparation of this kind of general model of Rules of Affreightment.

SIR WILLIAM PICKFORD. — I wish first to entirely support the proposition of Dr. Schaps that this matter is really far too important and too large for us to discuss at the end of a meeting of this description ; and that it will be very much better dealt with by being referred, as Dr. Schaps has proposed, either to the Permanent Bureau, or to some sub-commission such as that of Paris, which should be appointed by the Permanent Bureau. That seems by far the best way of dealing with this matter. That there is a very great deal to be discussed in relation to it is perfectly obvious by the Preliminary Report Vol I, which has been put into our hands, and which I hope most of us have studied. The admirable and instructive Report of M. Leon Adam shows that there is about as much as anybody can possibly digest in a considerable period of time ; and it is obvious to me that it would be very much better done by a Sub-Commission, or by the Permanent Bureau who can then bring certain definite propositions before the next Conference, with wich that Conference will be able to deal. Therefore I entirely support the suggestion of Dr. Schaps that that should be done, and I understand that it is also supported by my friends from the United States.

Then with regard to what M. Loder has said, no doubt

these matters which he has mentioned are very important, and would be very desirable things to do I daresay, if it were possible. M. Loder I think is a bold man, when he proposes to settle a Bill of Lading that will satisfy every shipowner and every shipper. If it can be done no doubt it will be a very good thing to do ; and the other matters that he mentioned are also of very great importance, but it does seem to me that if we are entering upon them, we are entering upon matters compared with which all that this Conference has yet done are mere child's play ; and I would suggest that it would be better for us to dispose of the question of freight before we embark on the very large investigation proposed by M. Loder. I confess that the matters here discussed in these Reports (especially in the admirable one of M. Leon Adam) have been about as much as my limited intelligence could take in at one time. Therefore I suggest to the Conference that perhaps the easier course would be to have these matters of freight which are now proposed to them and which are before them, and which will be dealt with by the Sub-Committee, dealt with and disposed of by a future Conference, before we embark on the large and most important subject which M. Loder has suggested.

(*Traduction orale par* M. BETOCCHI)

Sir William Pickford vient de dire que tout en appréciant les observations qui viennent d'être présentées à la Conférence, il se range à la proposition du Dr. Schaps de renvoyer la question soit à une commission spéciale. soit au Bureau Permanent, la matière étant trop vaste pour être étudiée encore en ce moment. Il croit en cela être l'interprète des délégués des Etats-Unis.

M. LOUIS FRANCK (Anvers). — Tout en appréciant l'importance du projet dont parle M. Loder, je suis aussi d'avis que le sujet est tellement vaste et les discussions

auxquelles il va donner lieu, sont d'une telle extension, qu'il faudra renvoyer la question à une Commission.

M. Loder (Rotterdam). — Je suis parfaitement d'accord, et il est entendu alors que les principes devront être discutés par elle.

M. Autran (Marseille). — J'ai une proposition à faire qui ne vous retiendra pas bien longtemps. Je crois que tout le monde est d'accord pour renvoyer la question du fret à une sous-commission. J'ai consulté mes collègues français et c'est en leur nom que je viens vous demander de bien vouloir décider que la réunion de cette commission se tiendra à Paris. C'est à Paris que nous avons élaboré les avant-projets que nous venons d'approuver et je ne crois pas que la ville de Paris soit une de ces villes dans lesquelles un étranger soit peu disposé à se rendre.

Dans ces conditions, je prie le Bureau de bien vouloir prendre acte de cette proposition : que la prochaine Commission se réunira à Paris.

M. Jacq. Langlois (Anvers). — Les questions portées à l'ordre du jour sont effectivement très intéressantes et je serais entièrement d'accord pour ne pas continuer la discussion si nous devions examiner les six points qui sont devant nous. Mais à mon avis, vous aurez beau décider, vous aurez beau faire un contrat uniforme, vous n'arriverez absolument à rien — comme on l'a dit — pas plus que pour les connaissements.

Il est évident que pour tout ce qui peut se régler par contrat entre les parties, il ne faut pas s'en occuper ici. Les parties contractantes elles-mêmes savent parfaitement ce qu'elles veulent et peuvent stipuler dans leurs conventions telles clauses qui leur conviennent.

Mais il y a des points dans ce questionnaire qui ne sont pas régies par la volonté des parties, mais par des événements que l'on ne peut prévoir, et sur ces points-là, il me semble qu'il serait hautement désirable non pas de remettre la discussion aux calendes grecques, mais de commencer à examiner ces questions.

L'heure est très avancée ; des questions parfois intéressantes arrivent à la fin. Mais cette question-ci est tellement intéressante, qu'il vaut bien la peine de s'y arrêter. Bien entendu, je n'entends discuter que les cas, non soumis à la volonté des parties, mais qui dépendent uniquement de circonstances imprévues, notamment la question suivante : « Lorsque la marchandise est vendue en cours de route, soit par vice propre, soit par fortune de mer, doit-on le fret ? »

Il me semble que c'est là une question qui peut être résolue en fort peu de temps, et je crois que ce serait une chose fort utile.

M. Louis Franck (Anvers). — L'idée du Bureau n'est pas qu'un échange de vues générales soit inutile, d'autant plus que nous devons attendre le travail de la commission sur la Responsabilité. Par conséquent, un aperçu général ne peut être qu'utile.

M. Langlois (Anvers). — En ce cas, je vous exposerai mon opinion sur la question générale.

Pour le fret *pro rata itineris*, il est évident que cette question ne m'arrête pas longtemps. La cargaison a un avantage au transport effectué, il n'est que juste que l'armateur ait sa part de cet avantage. Si la cargaison n'a aucun avantage — et cela peut arriver et il se peut que la marchandise n'ait absolument rien gagné par un transport partiel — dans ce cas, je ne comprends pas le fret de distance.

Le cas qui me préoccupe beaucoup plus, c'est le n° 2 : Du Fret en cas de vente de la cargaison.

Je ne comprends pas trop que sur cette question, il y ait divergence. Et cependant, les sujets de la nation qui est la plus intéressée ici, les Anglais, ne sont pas d'accord. En Angleterre, lorsque la marchandise n'arrive pas à destination, on ne paye pas de fret. C'est simple, c'est court. Mais est-ce juste ? Moi, capitaine, j'ai à mon bord un millier de tonnes de marchandise ; je vois que ces marchandises sont avariées et que lorsque j'arriverai au port de destination, ces marchandises ne vaudront plus rien pour le propriétaire. Si je les vends donc, j'agis comme un véritable mandataire. Et parce que j'ai agi comme un bon père de famille, vous me répondrez : *Niente !* Vous n'aurez rien » ?

Du moment donc que la marchandise est vendue pour cause d'avarie, il n'est pas juste de ne pas payer de fret.

Lorsque la marchandise est vendue pour les besoins du navire, la question est tout aussi simple. Le capitaine va devoir rembourser la valeur de cette marchandise à destination, valeur qui compend parfaitement bien le fret ; il est donc encore une fois fort juste que l'on paie le fret au capitaine.

Chaque fois que le navire est tenu de continuer son voyage, il me semble que la question de la débition du fret ne peut être mise en doute. Lorsque le navire est condamné, nous arrivons à la même question que la question n° 1. Elle ne m'arrête absolument pas ; je n'y attache aucune importance.

La question que je voudrais examiner, c'est le n° 2. Pour le reste, comme je vous l'ai dit, le contrat prévoit cela.

(*Verbal translation by* Mr. LOUIS FRANCK).

M. Langlois thinks it is wise to have at least a general discussion on this matter now, if we want the Commission to know what may be the general direction of the ideas of the Conference. He was then invited by the Chair to state his views and he said that he made a distinction between the first, second and third questions on the one hand, and the fourth and fifth on the other hand. The two latter are in his opinion matters which may be referred to the contract of the parties. As to the two first, with regard to freight *pro rata itineris,* he is of opinion that as a matter of principle no freight should be due, the contract not having been executed; but whenever real services have been rendered to the owner of the cargo, by carrying the goods up to a certain point, equitable indemnity should be allowed for them.

On the second question of freight when cargo has been sold, he expressed the following views: When the cargo has been sold in order to supply to the Captain necessary funds, the Captain is bound to report to the Port of discharge the value of such cargo, and he has to pay that value, with the freight included. So the freight must be paid to him. If, on the contrary, the cargo is sold by reason of the state in which it is found at an intermediate port, the Captain should not be the sufferer by losing the services which he has rendered to the cargo, when he sells it at that place, instead of taking it on to the final port, where it may arrive in a condition in which it would have no value at all. As to the third question — the case where the ship is condemned in the course of the voyage — it should come under the same rules as he has already explained with regard to *pro rata itineris.*

JUDGE BRADFORD. — It seems to me to be absolutely futile to enter upon the discussion of the question of freight at this late hour — it can answer no useful purposes whatever. The statement that has already been made by M. Franck of itself shows that even in dealing with the general question suggested much more time would be required than we have at our disposal. I can conceive of no more reasonable proposition to entertain in regard to this subject than the one which has already been suggested — namely to refer it to the proper Committee to report to the next Conference.

M. A. MARGHIERI (*président*). — Avant de donner la parole à d'autres orateurs, nous avons à examiner la proposition du Dr. Schaps, de nommer une commission. Cette sous-commission aurait pour mandat de dresser un avant-projet qui serait soumis à l'examen de la prochaine conférence.

M. Loder fait un amendement à cette proposition : il voudrait que le mandat de la sous-commission fût beaucoup plus large ; mais il a accepté les observations de M. Pickford, à savoir que nous devrions d'abord limiter nos études aux questions posées par le Bureau pour en arriver ensuite aux autres questions relatives au fret.

M. Autran a proposé que la sous-commission se réunisse à Paris, et je crois pouvoir remercier M. Autran pour son invitation.

Je crois donc pouvoir mettre au vote la proposition de M. Schaps : c'est-à-dire de nommer une sous-commission qui préparera un projet à soumettre à la prochaine conférence.

Tout le monde est d'accord ? La proposition est donc adoptée.

(*Verbal translation by* Mr. BETOCCHI)

The President has summed up the debate on this question, and proposes that Dr. Schap's proposition should be submitted to the Committee to prepare a document to lay before the next Conference.

M. JOSÉ VELEZ Y CORRALES (Espagne). — J'étais chargé de soutenir à cette conférence les idées de mon pays au sujet des Conflits de lois en matière de fret. Ces idées sont exprimées complètement dans le rapport de M. Spotterna qui a été communiqué aux membres de la Conférence. Ce rapport contient notamment un avant-projet qui se limite aux questions posées. En présence de la résolu-

tion qui vient d'être prise, je me borne à exprimer l'espoir que la sous-commission à désigner tiendra compte de ce rapport.

M. MARGHIERI (*président*). — S'il n'y a pas d'opposition, je considère la proposition de M. Schaps comme adoptée.

(*D'accord. — Agreed.*)

La limitation de la Responsabilité des Propriétaires de Navires

Limitation of Shipowners' Liability.

Reprise de la discussion.
Discussion continued.

JUDGE BRADFORD. — May I be pardoned if I refer for only a moment or so to a matter which may not be strictly in order, but which I wish to refer to for the sake of securing harmony of action among the different States respecting uniformity in the maritime law. I beg leave to say that the delegates from the United States fully share in what I assume to be the desire of all, that uniformity of action shall be secured as soon as possible. We fully share that desire in all sincerity. Therefore in anything I have to say you will understand that I speak in no spirit of contention. The principal point of difficulty, or certainly one of the principal points of difficulty is contained in the Article in respect of which I made a few remarks the other day, Article 6 of the draft-treaty on the Limitation of Liability. The question of the alternative payment of £ 8 sterling per ton has never been acted upon in the United States. There has been a sentiment among us, but

there has been no official action of any kind. Now, not in a spirit of contention, but solely with the desire to secure, if possible, an agreement in relation to the subject matter of Article 6, and in order that the United States may understand definitely what the attitude of this Conference is, I do respectfully ask that the United States may be so informed through the instrumentality of a vote upon a resolution which I have the honour to propose. If this resolution be voted down, as I apprehend it may be, the United States will be informed, and will then know what it has to meet and what it has to discuss. But if this matter be excluded entirely from consideration they are left in the dark. The resolution which I wish to propose, and on which the American delegation would respectfully ask for a vote, is this :

« *Resolved that it is the sense of this Conference that Article 6 of the draft-treaty on Limitation of Liability be stricken out,* OR *that the number of Pounds Sterling therein specified should be increased* ».

A vote on that resolution, whether in the affirmative or in the negative, will accomplish the result which we desire -- it will inform the people of the United States of the present attitude of England and the Continental nations on this subject, and the delegates from the United States hereafter will be better informed, and will know what action to adopt with regard to it. I therefore trust that a vote may be taken on this resolution.

(*Traduction orale par* M. LOUIS FRANCK)

Je vais traduire brièvement ce que l'honorable délégué des Etats-Unis a dit :

Dans une pensée de conciliation et de sage politique notre honorable collègue M. Bradford et notre collègue M. Brown vous demandent le vote dont je vous explique la portée.

Ils disent que l'option indiquée dans l'article 6 de l'avant-projet sur la responsabilité, quant aux £ 8. est, pour les Etats-Unis, une question nouvelle. Ce système, qui consiste à généraliser le principe relatif à l'abandon, mais en y ajoutant un maximum de £ 8., n'a pas encore été chez eux sérieusement discuté.

Vous savez tous quelles sont les considérations qui nous ont guidés. C'est tout d'abord ce sentiment qu'une loi internationale, quelle qu'elle fût, serait en tout cas meilleure que l'état chaotique de la situation créée par les législations d'aujourd'hui. C'est ensuite cet autre sentiment qu'il y a une catégorie de navires — les navires à passagers et à grande vitesse — dont la valeur augmente dans des proportions de plus en plus considérables, moins peut-être par les éléments qui font partie intrinsèque du navire comme tel que par tous les aménagements de luxe qu'il faut y faire pour le transport des passagers.

Mais il est de toute évidence que pour les Etats, comme pour chacun de nous, l'élément essentiel, c'est de connaître l'opinion des autres pays et c'est précisément pour que les délégués des Etats-Unis puissent dire chez eux, quelle est la pensée des autres pays, qu'ils ont prié la Conférence de bien vouloir émettre un vœu sur la proposition suivante :

« *Que la Conférence décide que l'article 6 de l'avant projet de traité sur la* » *Limitation de la responsabilité soit omis, ou que le chiffre de £8 qui y est men-* » *tionné, soit augmenté* ».

M. le Président me charge de dire qu'il met au vote la proposition de nos amis des Etats-Unis. Ceux qui veulent l'adopter voteront « oui ». Ceux qui la rejettent, voteront « non ».

(La proposition est rejetée par toutes les nations, sauf les Etats-Unis, qui votent « oui » et le Japon, qui s'abstient, faute d'instructions.)

(The proposal is rejected by all nations, except the United-States' delegates, voting « yes », and Japan abstaining on account of « no instructions ».)

M. Marghieri (*président*). — Nous passons donc à

l'article 2 du projet sur la Responsabilité. Le nouveau texte arrêté par la Commission est conçu comme suit :

ARTICLE II.

Le propriétaire du navire n'est tenu que sur le navire, le fret et les accessoires du navire et du fret afférents au voyage

1° des faits et fautes du capitaine, de l'équipage, du pilote ou de toute autre personne au service du navire ;

2° de l'indemnité d'assistance ou de sauvetage et des obligations contractuelles ou légales assumées par le capitaine.

Le propriétaire est tenu sans limitation des gages du capitaine et de l'équipage et des créances pour réparations et fournitures.

Rien dans les dispositions qui précèdent ne porte atteinte à la compétence des tribunaux, à la procédure et aux voies d'exécution organisées par les lois nationales.

The owner of a vessel shall not be liable beyond the value of the vessel, freight and the accessories of the vessel and the freight appertaining to the voyage

1° for the acts and defaults of the captain, crew, pilot or any other person in the service of the vessel ;

2° for salvage remuneration and other obligations legal or contractual incurred by the captain.

The owner is liable without limit for the wages of the captain and crew and for repairs and necessaries.

The above provisions do not affect any jurisdiction, method of procedure or form of action recognized or adopted by the national laws.

M. le Dr. EDZARD (Bremen). — Wenn ich in die Discussion eintrete, möchte ich nur darauf hinweisen dass es beim Anfang ganz verstanden war dass nicht das Französiche Recht anwendbar wird, sondern das Deutsche System.

Nach der Englischen Fassung soll gehaftet werden nicht mit dem Schiffe, sondern mit dem Werth des Schiffes Ich möchte nur aufmerken was ich bereits in Amsterdam bemerkt.

Es giebt ein Unterschied zwischen die Französiche und die Englische Fassung und die ist noch nicht begriffen

worden. Nun der Unterschied liegt darin: nach dem Französichem Recht hat der Schiffs Eigenthümer, falls er das Privilegium der beschränkten Haftung in Anspruch nehmen wird, zu sagen: « ich abandoniere » und damit findet er dieses Recht.

Nach unserm Deutschen Rechte hat er nichts zu thun.

Der Rheder hat doch das Recht mit dem Werth des Schiffes zu haften. Und weil dies Unterschied besteht ist es nicht bloss überflüssig darauf hinzuweisen.

Ich bin einverstanden, wenn der Französiche Text dem Vertrag zu Grunde gelegt wird; eine Uebersetzung für die Engländer sollte dann allerdings genau die Französiche Fassung ausdrucken.

(*Traduction orale par* M. LOUIS FRANCK).

M. Edzard a fait remarquer qu'il est intéressant que les deux textes concordent complètement, notamment sur la formule « le propriétaire n'est tenu que sur le navire... » Il a rappelé la discussion qui a déjà eu lieu à ce sujet et signale qu'il y a entre le système français et le système formulé par le droit allemand des différences pratiques essentielles.

M. LOUIS FRANCK. — Je dirai, pour ma part, qu'il suffit que ces observations de M. Edzard soient actées. Il est évident que nous ne devons jamais voter que sur un texte, le texte officiel et que les textes doivent nécessairement être votés en français, sauf à la Conférence diplomatique à décider s'il faudra également adopter un texte en anglais ou dans une autre langue. C'est elle qui veillera à ce que ces textes soient absolument conformes.

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* *

Dr Edzard puts before the meeting the view that it is most essential that the wording in wich the treaty is drafted

should make clear that it is not the procedure of the actual French system of abandonment, as it is worked in France, which is introduced, because, he repeats, and he is in agreement with the French delegation as to that, that the German way of working the general rule of limitation to ship and Freight is a more practical one; and he is in agreement that the French text, as it is proposed, perfectly expressed this idea. I added in reply, that as these are matters for the Diplomatic Conference, and as French has remained the diplomatic language, it will be for the Diplomatic Conference to decide whether they will have an English translation or German translatiou or Italian translation ; and if they do, they will themselves see that it is in accordance with the French text. I also said that as far as we are concerned here, our duty is to vote upon the French text; and, as Dr Edzard is in agreement with regard to the French text, I do not think it is worth while going any further into the matter.

M. F. C. AUTRAN (Marseille). — Si je me lève, c'est pour dire que nous sommes d'accord avec Monsieur Franck pour affirmer que la délégation française accepte parfaitement la substitution du système allemand au système existant en France, de même que ce texte donne la satisfaction la plus complète aux réclamations formulées par ce que j'appellerai les continentaux et les Américains en ce qui concerne la responsabilité à raison des contrats et des quasi-contrats du capitaine et des autres préposés de l'armement.

Vous vous rappellerez que c'est sur cette question qu'une divergence de vues très importante s'était manifestée entre nos amis anglais et le reste de la conférence et que l'on pouvait craindre au premier abord que l'œuvre de la conférence ne vînt à échouer.

Grâce aux concessions faites de part et d'autre, on est parvenu à se mettre d'accord, et aujourd'hui nos amis anglais marchent avec nous. Satisfaction est donc donnée à tout le monde, et je crois que nous n'avons qu'une chose à faire, c'est de voter par acclamations le texte lu par M. Franck et qui résume ce que nous désirons tous.

D'autre part, en même temps que vous voterez cet article, je désirerais que la conférence émît un vœu qui encouragerait fortement le Gouvernement belge dans les négociations qu'il engagerait avec les autres Puissances. Ce vœu serait le suivant :

« C'est que les projets de traités qui seront soumis à la Conférence diplomatique au point de vue de la Responsabilité et au point de vue des Privilèges et Hypothèques s'ils ne constituent pas la réalisatisn complète de l'idéal de chacun d'entre nous, sont, dans la mesure pratique, le maximum de ce que chaque nation peut faire. Par conséquent, ce maximum étant réalisé, c'est le but que nous devons nous efforcer d'atteindre.

Je crois que si la conférence, en clôturant la discussion, émettait un vœu dans lequel les représentants des différentes nations constatent cet accord unanime sur ce terrain d'entente commune sur lequel nous sommes parvenus à nous grouper, ce serait la clôture digne de ces travaux, ce serait le meilleur encouragement pour le Gouvernement belge pour soumettre le résultat de nos travaux à la Conférence diplomatique.

(Applaudissements.)

M. LESLIE SCOTT (London). — M. le Président, I may say the German delegates objected to the English translation of this new Article 2, but we are willing to accept the French text. The words in the English translation they objected to were these : « The owner of a vessel shall

not be personally liable, but shall be liable only to the extent of the value of the vessel » — the words objected to being « the value of ». They say that would involve in their opinion an adoption of the French method of abandonment in lieu of the present existing German method — the French method imposing on the defendant shipowner the obligation of taking overt steps to get the benefit of the limitation, whereas the German rule gives the benefit to the shipowner *ipso facto*, although he does nothing. They however agree that if the meaning of the French were made clear by the English translation being amended as follows they would be satisfied. The amendment of the English text to which they refer is the omission of the words « the value of » ; so that it reads « The owner of the vessel shall not be liable beyond the vessel the freight and the accessories ». They agree to that, and therefore it is accepted unanimously.

Traduction anglaise rectifiée de l'Art. 2.

The owner of a vessel shall not be liable beyond the vessel, freight and the accessories of the vessel and the freight appertaining to the voyage

1° for the acts and defaults of the captain, crew, pilot or any other person in the service of the vessel ;

2° for salvage remuneration and other obligations legal or contractual incurred by the captain.

The owner is liable without limit for the wages of the captain and crew and for repairs and necessaries.

The above provisions de not effect any jurisdiction, method of procedure or form of action recognized or adopted by the national laws.

Mr. CLIFORD J. CORY. — As far as the English delegation is concerned there are gentlemen representing the shipowners, there are expert lawyers representing them, and there are maritime experts interested on their behalf ;

but so far as the cargo owners and merchants generally of England are concerned, there is nobody representing them but myself. Now I cannot take upon myself to commit the cargo owners and merchants of England, so far as my vote would commit them, to an approval of this Article. I do not say that I disapprove, but there are clauses which should be submitted to the merchants and cargo owners, before my vote could commit them to any course upon this subject ; and therefore I prefer to abstain from voting on this motion.

Mr. SERENA (London). — I represent cargo owners, as well as shipowners, because I represent the Chamber of Commerce of London.

Mr. LOUIS FRANCK. — May I just say a word about this, without trespassing on your time. It is just worth while to say, especially from the point of view of cargo owners and underwriters of cargo, and general creditors of the ship for supplies and repairs, that this proposal as it stands is a considerable progress in their favour, because it means in substance that all over the continent where at present there is a system of limitation by abandonment of the ship, there would come, instead of that, the personal liability of the owner : The result being that, whereas as at present, if the ship is at the bottom of the sea, the owner may say to the repairers or suppliers of necessaries « Gentlemen, I am very sorry for what has happened, but you may take your redress against the wreck », we have substituted for that in view of the opinions expressed by Mr Cory, and also by the American delegates, from the point of view of repairers, this general system, which is more equitable, and more in harmony with the modern facilities of controlling what the Captain is doing — 'that

for repairs and necessaries the owner will have himself to face whatever debts the Captain has contracted.

Mr. CORY. — In reply to to what M. Franck has said, I quite recognise that great consideration has been paid to our views and those of the United States, and that this no doubt is an improvement of the draft as it was arranged; but still, without this draft treaty having been put before anybody that I am aware of representing cargo owners and merchants, I could not undertake on their behalf to approve it, although I do not say they would disapprove of it.

M. MARGHIERI (*président*). — S'il n'y a pas d'autres orateurs, je mettrai au vote le texte qu'on a lu.

Chorus. — Votons par acclamations.

(*Accepté à l'unanimité. — Carried unanimously*).

M. LOUIS FRANCK. — Il faut que je vous lise encore quelques modifications à la rédaction, modifications qui ont été élaborées par la Commission.

ARTICLE IX.

Le propriétaire peut pendre dans l'intérêt de qui il appartiendra toute mesure utile en ce qui touche le navire sans être déchu du droit d'exercer les options prévues par les dispositions précédentes.

Il est responsable de toute détérioration ou de tout dommage, qui après la fin du voyage surviendraient au navire au préjudice des créanciers à l'égard desquels a limitation est admise.

The owner may take in regard to the vessel and on behalf of whom it may concern such measures as may be expedient without prejudicing his right to exercise the options hereinbefore granted.

But he shall be responsible for all deterioration or damage to the ship which may take place or be caused after the end of the voyage to the prejudice of creditors in respect of whose debt limitation is admitted.

M. LESLIE SCOTT. — I thought it was better to have that put in for the sake of England where the right of abandonment has not been discussed except from the point of view of underwriting. It has really the effect of a waiver clause in a policy of insurance.

ARTICLE X

Les dispositions précédentes ne portent pas atteinte au droit des créanciers de saisir le navire dans un port d'escale, même avant la fin du voyage.

La caution donnée pour obtenir mainlevée est acquise au créancier saisissant dans les termes dans lesquels elle a été donnée et ne sera ni modifiée par les événements ultérieurs, ni invoquée à leur sujet pour restreindre les droits d'autres créanciers.

The preceding provisions shall not prejudice the right of the creditors to seize the vessel at a port of call even before the end of the voyage.

The creditor who arrests the ship shall be entitled to the bail given to effect its release according to the terms under which the bail is given and his rights shall not be affected by subsequent events. In the event of bail being so given the rights of other creditors shall not be affected thereby.

ARTICLE XI

Les dispositions précédentes s'appliquent à l'obligation d'enlever l'épave du navire coulé, et aux responsabilités s'y rattachant, qu'il y ait ou non faute du Capitaine.

Elles ne s'appliquent pas aux obligations dérivant des fautes personnelles du propriétaire, des contrats passés par lui, ou de ceux qu'il a autorisés ou ratifiés.

The preceding provisious shall apply to liabilities arising out of an obligation to raise the wreck of a vessel whether the wreck was occasioned by the fault of the Captain or not.

They shall not apply to liabilities arising from the personal default of the owner, from contracts entered into by himself, or from those he authorised or ratified.

ARTICLE XII

Dans les cas où d'après les législations existantes, l'armateur et l'affréteur sont tenus de la responsabilité du propriétaire du navire, ils ont droit à la limitatiou prévue par les dispositions qui précèdent.

An « armateur » or charterer who under the national law is liable as owner, may limit his liability in the manner permitted by this code to an owner.

ARTICLE XIII

Le présent traité est sans application aux réclamations pour pertes de vies humaines ou dommages corporels, lesquels continuent à être régis exclusivement par les lois nationales.

The present treaty has no application to claims for loss of life or personal injury which remain regulated exclusively by the national laws.

M. MARGHIERI. — N'y a-t-il pas d'objections ?

Voté à l'unanimité. — Carried unanimously.

SIR WILLIAM PICKFORD.— M. le President and Gentlemen, yesterday M. Autran after the address which we had heard from M. Capelle, mentioned a Resolution of the Conference which it was thought right and well for the Conference to pass. He did so as I understand in a great measure upon the suggestion of M. Capelle who thought it would be useful at the Diplomatic Conference. Anybody who has attending a Diplomatic Conference, as I had the honour of doing, will know from M. Capelle's ability and courtesy in managing that Conference in its Committee sittings over which he presided, that no suggestion of his should be disregarded (*Applause*). I am not going to say anything more about it because the resolution, or the substance of it, that it was suggested should be passed, was mentioned by M. Franck yesterday; and therefore I

am only going to second on behalf of the British delegates that resolution. In English it is this :

« **This Conference is of opinion that the draft Codes on
» Limitation and Mortgages settled at Venice constitute a
» fair compromise between existing legislation and inte-
» rests and should become law. The Permanent Bureau
» is theretore directed to humbly request the Belgian
» Government to summon the third meeting of the Diplo-
» matic Conference, and to lay before it the two Codes
» passed at Venice in order that they may be dealt with
» by the Powers and become law, concurrently with the
» Codes of Collision and Salvage** ».

May I say that that resolution does not of course mean that this Conference wishes to take from the Diplomatic Conference any discretion that it may have to make any alteration that it thinks fit : it only presents to the Diplomate Conference these two Codes together with the other two Codes, in order that the Diplomatic Conference may agree to treaties in the spirit and on the principles of those Codes. But of course the Diplomatic Conference would have power to make any alterations in individual matters that they may think fit to make. Now that is the resolution which we are told will be useful at the Diplomatic Conference. It was proposed, and I believe accepted yesterday, when it was proposed by M. Autran; but I wish to second it, and I have read this in English in order that it may be now adopted. (*Loud applause*).

Mr Brown (New-York).— If the primary idea of the mover of this resolution is to secure unanimity among the delegates I am very sorry to say that the American delegates are not able to vote yesterday's resolution. The reason is that viewing this entire subject that has been considered by this Conference from the point of view of a cargo owning

nation and not a shipowning nation, we feel that there has been no adequate or fair compromise yielded to the owners of cargoes, but that every favour has been accorded to the owners of ships. Nevertheless it is my personal view, and I believe it is the view of my eminent associate, that even this Code which has been voted here is preferable to the vast diversity of laws as they now exist; and if the resolution could be so altered as to express that view, if I might do so without committing my country, I should personally assent to it.

(*Traduction orale par* M. LOUIS FRANCK).

Mr. Brown, au nom de la délégation américaine, déclare qu'en ce qui le concerne, il ne peut se rallier à la résolution proposée, parce qu'il est d'avis qu'au point de vue des chargeurs, il y a bien à redire à l'avant-projet voté. Mais si la résolution pouvait être modifiée en ce sens que le code, devenant loi universelle, vaudrait mieux tel qu'il est que l'état actuel des diverses lois, il pourrait s'y rallier.

Mr. CLIFORD J. CORY (Londres). — As far as I am concerned I think that the remarks I made just now apply equally to this resolution.

M. LOUIS FRANCK. — Il me semble que nous pouvons considérer la résolution comme adoptée, étant donné que nous insérons dans le procès-verbal les remarques qui viennent d'être présentées.

Il s'entend que le Bureau du Comité Maritime International reverra encore soigneusement les résolutions votées, afin que le texte soit en harmonie parfaite avec les principes adoptés.

(*Adhésion*).

M. MARGHIERI (*président*). — Les résolutions prises sur la responsabilité marqueront une date dans l'histoire du droit maritime. Depuis dix ans que nous nous occupons de

ces graves questions, peut-être aucune n'a eu l'importance de la question que nous venons de résoudre aujourd'hui.

Nous devons cela, comme M. Autran le disait tout à l'heure, à l'entente qui a pu se faire entre les délégués de toutes les Associations, et nous devons une reconnaissance tout à fait spéciale à Messieurs les délégués anglais qui sont venus à notre rencontre et qui ont accepté de leur côté tout ce que nous avons pu souhaiter.

Comme Italien, vous me permettrez d'être profondément orgueilleux de ce que ce vote ait pu avoir lieu en Italie. Le principe de la limitation de la responsabilité eut son berceau chez nous. La limitation de la responsabilité a été le principe dont est parti le progrès du commerce et de l'industrie. Il a occupé le droit maritime pendant bien longtemps, et il nous revient avec l'accord de toutes les nations. J'ose dire que nos anciens jurisconsultes seraient bien contents aujourd'hui d'assister à cette fête du droit qui a lieu dans une ville de l'Italie.

Je remercie tout d'abord M. Autran et M. Franck et tous les membres du Bureau qui m'ont mis dans les conditions de pouvoir accepter ma tâche. Sans eux, je n'aurais pu accomplir la tâche que vous avez bien voulu me confier. Mais je suis sûr d'interpréter votre sentiment en exprimant un vote de gratitude, un vote de profonde reconnaissance, spécialement envers messieurs les Belges et envers le Gouvernement de la Belgique. (*Applaudissements*).

Nous devons à leur force de volonté, à leur esprit de suite, à l'initiative du Gouvernement belge, d'en être arrivés au point où nous sommes aujourd'hui.

Nous sommes bien convaincus que nos efforts réussiront et que la 3me Conférence diplomatique pourra, en adoptant les principes qui sont dans notre avant-projet sur la Limitation de la Responsabilité, donner à la légis-

lation maritime universelle une des contributions les plus savantes et une des contributions les plus utiles au commerce de tous les peuples.

Permettez-moi, avant de terminer de proposer encore un vote de remercîments à Monsieur le Maire de la Ville de Venise (*Applaud.*).

Mr. Judge Bradford. — Mr. President before we separate I desire on behalf of the delegation from the United States to thank you and also M. Autran for the courtesy we have received at your hands, and to express our appreciation of the ability and impartiality with which you have presided over the deliberations of this Conference. (*Applause*). It is to be regretted that on some important points complete unanimity has not been reached. We feel nevertheless that progress has been made towards international unanimity in the maritime law, and we trust that in the near future greater results may be secured. While we have been here, relations of cordial friendship have been established between our fellow delegates and ourselves, which I am sure will remain unbroken in coming years. We shall look back with pleasure to the days we have spent in this beautiful City — so rich in art, romance and historical associations. Indeed I feel quite sure that it has been an inspiration to all of us that this Conference has been held in Venice, the early Queen of the Seas, renowned for her prowess and illustrious deeds, and refulgent in her commercial and maritime glory. (*Loud applause*). Finally, Mr. President and Gentlemen, in parting, we whish you one and all, long life prosperity and happiness. (*Applause*).

M. Reck (Brême). — Messieurs, au nom de l'Association allemande de Droit Maritime, j'ai l'honneur d'in-

viter le Comité Maritime International de bien vouloir tenir la prochaine session de la conférence à Brême.

Messieurs, le Sénat de la ville libre hanséatique, la chambre de Commerce et toutes les autres grandes associations, seront heureux de vous recevoir. Nous ne pouvons vous offrir sons un ciel toujours serein, une ville pleine de palais anciens, mais ce que nous pouvons vous donner, c'est une hospitalité cordiale et sincère dans une ville qui a un passé dans l'histoire et qui est actuellement la ville industrieuse du commerce maritime.

J'espère donc que vous voudrez accepter notre invitation.

M. CRUZ (Buenos-Aires). — Je suis le dernier arrivé, et c'est pourquoi je prends la parole au nom de tous les délégués pour exprimer tous nos remercîments à la Ville de Venise et au commerce italien, du chaleureux accueil qui nous est fait ici.

Au nom de la délégation de l'Association Argentine en témoignage de la bienveillance avec laquelle vous nous avez accueillis, et comme une preuve que nous sentons tout l'orgueil de travailler avec vous, nous vous promettons d'être dans notre pays les interprètes fidèles de la Conférence maritime et de faire tout en notre pouvoir pour faire aboutir promptement, auprès des autorités politiques de notre pays, les réformes si utiles qui sont les résultats de vos délibérations.

M. CHARLES LE JEUNE (Anvers). — J'ai à remercier tout d'abord l'honorable M. Reck de la proposition si aimable qu'il veut bien faire à notre Comité Maritime International. Incontestablement une assise de droit maritime se trouvera à sa place à Brême, la grande ville qui a donné naissance au Norddeutscher Lloyd, et rien ne pourra nous être plus agréable que de nous y être ren-

contrer avec ces amis qui sont pour nous des amis de la première heure et qui nous ont si brillamment secondés dans l'accomplissement de notre œuvre. Je suis heureux de pouvoir remercier au nom de notre Comité Maritime International M. le Dr. Reck de son invitation et je l'accepte, en réservant toutefois les arrangements inévitables quant aux dates et aux éventualités imprévues qui pourraient se présenter et dont nous ne pouvons pas, d'ici à un temps déterminé, mesurer exactement la valeur.

Maintenant, Messieurs, il me reste à ajouter quelques remercîments à ceux que vous avez entendus.

Je voudrais d'abord vous dire que les délégués de la Belgique sont profondément émus de l'hommage qu'a bien voulu leur adresser M. le président Marghieri mais nous nous permettrons de le renvoyer à son éminent auteur. Assurément c'est à l'Italie qu'il revient ; c'est à elle que vont nos sentiments de la plus vive reconnaissance pour la façon dont elle a contribué à donner à cette œuvre l'essor final.

Quant à l'hospitalité que nous y avons tous reçue, elle a vraiment dépassé les limites des plus extravagantes espérances. Nous restons sous le charme permanent de l'accueil qui nous a été fait par l'Association italienne et je me trouve à court de paroles pour exprimer l'impression dont nous sommes pénétrés.

Je me permets d'ajouter à ces remercîments ceux que nous devons au nom du Comité Maritime International à Monsieur le Ministre qui a bien voulu ouvrir notre séance, et aux Gouvernements qui ont honoré si grandement cette conférence par l'envoi de nombreux délégués de si haute distinction qui, nous l'espérons, nous continueront la bienveillance dont ils nous ont donné tant de preuves et nous prêteront leurs précieux appui auprès de leurs gouvernements respectifs, pour l'accomplissement de notre tâche.

J'adresse aussi l'expression de notre chaleureuse recon naissance au Maire de Venise, à la Chambre de Commerce, à la Navigazione Generale et à la Veloce qui ont bien voulu nous recevoir avec tant d'éclat, aux Patriciens de Venise qui nous ont ouvert leurs magnifiques palais; enfin à l'Administration des Archives qui nous a permis de parcourir des documents du plus grand intérêt se rapportant à l'histoire du droit maritime.

Je n'oublie pas les distingués secrétaires italiens qui ont eu un lourd travail pendant cette conférence, mais qui, avant cette réunion, ont assumé toutes les difficultés et tout le labeur de l'organisation ; j'ai nommé MM. Betocchi, Serena, Brosch et Yesi.

Enfin, je me permets encore d'ajouter que nous devons une part toute particulière de gratitude, pour l'accomplissement heureux de nos travaux, à nos amis d'Angleterre. Incontestablement, nous nous trouvions devant une très grande difficulté, eu égard à la différence qui existe entre leur droit et celui des autres nations. Il a fallu pour résoudre ce problème délicat leur concours le plus éclairé et je serai votre interprète en rendant un hommage particulier à Sir William Pickford et à Mr. Leslie Scott, qui nous ont si puissamment aidés de leurs lumières et en les remerciant cordialement de l'appui qu'ils nous ont donné au cours de ces travaux. (*Applaudissements unanimes*).

SIR WILLIAM PICKFORD. — M. le President, and Gentlemen, with regard to the thanks which we owe to the President, and to M. Autran, wo has been presiding in his place part of the time, to the City of Venice, and to all those who have so kindly received us, I have not the slightest intention of adding anything to the speeches that have been made except to say on behalf of the British delegates, and I think I might almost say I express the

feelings of everybody else, I entirely agree with what has been so well expressed. With regard to what has been said both by the President and by M. Le Jeune about the British delegates I can only say that we are heartily grateful to you for those words; and it is an inestimable pleasure to us to think that you have considered our conduct with regard to the business at this Conference has been worthy of the great nation which we represent. We have done our best to make concessions where concessions were possible; we have attempted to maintain principles where we thought principles ought to be maintained; and if we have failed in doing anything which we ought to have done for the promotion of the ends of this Conference, I can only say it has been because of the fact of our being — as we all of us are after all — fallible men, and not because we have not done our very best to do what was possible to bring about the great end of the unity of maritime law. (*Loud applause*).

Mr. GERTSCHER. — Signori ! Ho chiesto la parola non per ripetere i sentimenti di gratitudine a chi ci ha procurato un soggiorno cosi splendido, ma per rilevare un' altera circostanza.

Mi pare che in questi giorni nei quali noi siamo pervenuti alla felice soluzione di grandi problemi i quali occupavano le menti più elevate delle diverse nazioni, non soltanto da dieci ma da cento e più anni ; mi pare, ripeto, di vedere ritornata la gloria e splendore della nostra bella Venezia (*Applausi*). Mi pare che la gloria che Venezia si era procurata con la sua forza navale, riviva oggi più che mai, poichè proprio ora ed in questa città noi siamo giunti alla soluzione dei problemi più vitali per lo sviluppo della marina mercantile.

Non avevo altro da dire ; ma sono sicuro che ciò dicendo

ho interpretato il sentimento di tutti voi. (*Applausi vivissimi*).

M. MARGHIERI (*président*). — Avant de nous séparer, je voudrais proposer à la conférence d'envoyer un télégramme de remercîments au Roi d'Italie.
(*Adopté à l'unanimité.*)

La réponse de S. M. le Roi d'Italie a été reçue par M. Marghieri, président de la Conférence :

RACCONIGI, Reggia. 29/20/50.

Dr. Prf. A. Marghieri.

S. M. il Re rende cordiali grazie a cotesta assemblea ed in particolar modo ai delegati stranieri del gentile graditissimo saluto rivoltigli chiudendo gli importanti lavori del cui felice risultato la Maestà Sua vivamente si compiace.

Il Ministro E. PONZIO VAGLIA.

Administrative Sitting

General Meeting of the Permanent Members of the International Maritime Committee

After the Closing of the Conference, the permanent Members of the International Maritime Committee have held their ordinary annual General Meeting, under the presidency of M. Charles Le Jeune, Vice-chairman of the International Maritime Committee.

M. Charles Le Jeune opened the sitting and stated the objects on the agenda-paper.

« The powers of the Permanent Bureau expire this year. It shall therefore be necessary to elect a Permanent Bureau, according to the statutes of this Committee, for another period of three years.

« The meeting will then have to provide subsitutes for several members which we have lost during this year.

« We had the regret to lose M. le Baron Lambermont, the only « Membre d'honneur » of the Belgian Association for Unification of Maritime Law; since the very first moment, he has given to our work his most weighty support; we are also, to a very large extent indebted to him for the convening of the first session of the Diplomatic Conference which was called together by the Belgian Government. I beg to express our grateful homage to the memory of this great statesman.

« We further lost this year M. T. G. Carver, who was also one of our friends since the very origin of our work and who has taken so active a part in our labours. He always closely followed our meeting, and many a precious advice we received from him.

« In the United-States, we lost the Hon. W. Goodrich, who had been appointed by his Government as its delegate at the last session of the Diplomatic Conference.

« Finally, in Italy we had to regret the loss of M. Mingotti.

The Bureau of the Committee has added to its members a second Hon. General Secretary. Circumstances rendered this highly necessary and we have thought it useful to secure so precious a co-operation as that of Mr. Leslie Scott; the Permanent Bureau moves that the Meeting may ratify this appointment.

The appointment of M. Scott is confirmed unanimously.

On a motion of M. Alberto Marghieri, the retiring Bureau Permanent is re-elected for a further period of three years.

During the fast year, and in accordance with the powers given to the Bureau, the latter has appointed Sir W. Pickford, as a permanent members, in the place of Mr. Carver.

The Meeting unanimously confirms this nomination as well as that of Mr. R. B. D. Acland.

As the delegates present do not formally move any further proposals, the Meeting decides to give to the Bureau Permanent the necessary power to nominate any further members for the various countries. (1)

(1) In virtue of this power, the Permanent Bureau has subesequently appointed as permanent members : for the United-States, Judge Bradford and Fred. M. Brown, of New-York; for the Argentine Republic : M. Estanislas S. Zeballos, Juan C. Belgrano, Juan Carlos Cruz and Honorio Pueyrredon, of Buenos-Aires.

Finally, the Meeting appoints the following members who shall sit on the Sub-Committee to which the Conference has referred the question of *Conflicts of law as to Freight* :

Messrs C. D. Asser Jr (Amsterdam).
Enrico Bensa (Genoa).
Francesco Berlingieri (Genoa).
Frederic Brown (New-York).
Coloman de Fest (Fiume).
Frankfurter (Trieste).
Gütschow (Hamburgh).
B. C. J. Loder (Rotterdam).
Giovanni Martinolich (Trieste).
J. Stanley Mitcalfe (Newcastle).
Alfred Sieveking (Hamburgh).

The Bureau further is empowered to complete this Sub-Committee by appointing further members.

M. LE JEUNE informs the Meeting that since the Liverpool Conference, a Russian Society of Maritime Law has been constituted at St-Petersburgh.

The sitting was then closed.

ANNEX

When this Report was already under press, we received from London information that the British Committee of Maritime Law had been re-organized :

British Maritime Committee

Presidents : The R[t] Hon. Lord ALVERSTONE, Lord Chief Justice of England, London.

Vice-présidents : The Hon. Sir WALTER PHILLIMORE, Bart, London.
The Hon. Sir WILLIAM PICKFORD, London.

Secretaries : HARRY RISCH MILLER, London.
LESLIE SCOTT, London.

EXECUTIVE COUNCIL :

President : The Rt. Hon. Sir WILLIAM RANN. KENNEDY, London.
Members : MM. The Rt. Hon. INVERCLYDE, Glasgow.
R. B. D ACLAND, K. C., London.
K. BILBROUGH, London.
A. A. BOOTH, Liverpool.
Chas. E. BRIGHTMAN, London.
Sir CLIFFORD CORY, Bait., Cardiff.
JAS. CORMACK, Leith.
THOS. L. DEVITT, London.
JAS. DIXON, London.
WILLIAM GOW. Liverpool
Sir JOHN GRAY HILL, Liverpool
Sir ALFRED JONES, Liverpool
R. B. LEMON, London.
ARTHUR LINDLEY, London.
CHARLES MC. ARTHUR, Liverpool.
FRED. MC. NAIR, London.
F. W. MARTEN, London.
HARRY RISCH MILLER, London

Members : MM. J. STANLEY MITCALFE, Newcastle-on-Tyne.
DOUGLAS OWEN, London.
Sir FELIX SCHUSTER, Bart., London..
CHARLES J. C. SCOTT, London
LESLIE SCOTT, London.
JAMES H. SIMPSON, Liverpool.
ARTHUR SERENA, London.
Dr. CHARLES STUBBS, London.
F. SHADFORTH WATTS, London.

Further, we are informed that in Greece, a national Association is being founded.

Hellenic Association of Maritime Law

whose Bureau would be as follows :

President : M. EMBERICOS, Minister of Marine, Athens.
General Secretary : M. TYPALDO BASSIAS, vice-President of the House of Deputies, Athens

Among the most prominent gentlemen whose co-operation is advised us, are :

Mess[rs] J. VALAORITIS, Vice-governor of the National Bank ;
MATSAS, General Manager of the Bank of Athens ;
CALLERGI, Director of the Commercial Section at the Ministry of Foreign Affairs ;
GOUDAS, Frigate-Captain, Director of Commercial Marine at the Ministry ;
JEAN RALLIS, M. P. ;
EMBERICO, Shipowner ;
RADOS, Professor of Maritime Law, at the naval School ;
GEORGES STREIT, Professor at the University of Athens ;
ANDRIADÈS, Professor at the University of Athens ;
LAGARIMO, advocat, Piree.

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